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First Reformed Presbyterian Church

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COMMONWEALTH, ex rel. GORDON, et al.

vs.

WILLIAMS, et al.

A History of the Case, the Pleadings, the Arguments of the Counsel for the Defendants, and the Charge of Mr. Justice Williams.

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JAS. B. RODGERS CO.,
ELECTROTYPERS AND PRINTERS,
PHILADELPHIA.

History of the Case.

The First Reformed Presbyterian Congregation in the City of Philadelphia, was organized about the year 1800, incorporated on 19th March, 1816, under the Act of 6th April, 1791, and has from its organization been connected with the Reformed Presbyterian Church. Since 1854 the congregation has occupied a church building situate on the East side of Broad Street, below Spruce Street, which building had been erected at a cost of $65,720.24, $12,883.25 of which had been realized from the sale of another church formerly owned by the congregation, and more than $47,000 of which had been contributed by those who now adhere to the Defendants in the suit, or was collected by them from their friends without the congregation.

In 1868, on the first Monday of January, the charter day for the election of Trustees, there were two tickets in the field, the one having the names of Messrs. Ray, Graham, Johnston, Kerr, Williams, Walker, and McBride, representing the Defendants' party, and the other, having the names of Messrs. Young, Biggerstaff, Taylor, Gordon, and James Stewart, representing the Relators' party, together with Messrs. Graham and Johnston, who were therefore, nominated by both parties. As each voter deposited his ballot, he gave his name to the Tellers, who noted it.

"At the conclusion of the balloting, and previous to the report of the Tellers, it was on motion ordered that the votes polled remain in the custody of the Tellers until the lists of the parties voting be submitted to the Session and Board of Trustees for their examination, in order to ascertain whether all the votes cast were legal, protests against certain votes having been entered during the progress of the balloting, and no certificates of election to be given until it had been ascertained that no illegal votes had been cast. Several other motions were offered touching the question, but were afterwards withdrawn. It was then asked, could not the

votes be counted and a report of the same made to the meeting? After some discussion this was finally agreed to, with the understanding that the validity of the election be under the restriction imposed by the former resolution. The Tellers then announced that James Graham had received 471 votes, Thomas Johnston 467, Ephraim Young 264, John Biggerstaff 266, Robert C. Taylor 257, George Gordon 255, James Stewart 255, William Ray 234, Charles Williams 227, Thomas M. Kerr 226, Abraham Walker 224, Francis McBride 219, James McLeod 7, Robert Fletcher 7, James H. Windrim 4."

The Session and Board of Trustees met from time to time in the performance of their duty as Arbitrators, and on the 13th of February, 1871, they presented reports to the congregation, setting forth the fact that 127 illegal votes had been cast.

Messrs. Ray, Graham, Johnston, and Kerr, who, with Messrs. Young and James Stewart, were the Trustees for 1867, holding the election of 1868 to be a nullity, determined to "hold over" until the candidates on the Relators' ticket had established their right by legal proceedings. For the purpose of so establishing their right, Mr. Young and his associates, then represented by Hon. Eli K. Price, and J. Sergeant Price, Esq., filed a bill in Equity in the Supreme Court (January Term, 1868, No. 47) against the Trustees in possession, praying for a decree declaratory of the Complainants' title, and an injunction to restrain the Defendants from keeping them out of possession. The Defendants, represented by Hon. Wm. A. Porter, Chris. Stuart Patterson, Esq., and James C. Chambers, Esq., filed an answer.

An Examiner was appointed, and after considerable testimony had been taken on the part of the Complainants, they discontinued the suit.

Pending the said suit, the Complainants therein attempted to interfere with the Defendants in possession, in their collection of the pew-rents, when, upon Bill filed, (January Term, 1868, No. 63) and motion for an Injunction heard upon affidavits, Mr. Chief-Justice Thompson, sitting at *Nisi Prius*, held, that, pending the adjudication of the Complainants' rights, the Trustees for 1867 were entitled to hold over, and that, as Trustees *de facto*, they would be protected in the performance of the duties of their offices. He, therefore, granted an Injunction.

The Reformed Presbytery of Philadelphia being informed that there were dissensions in the First Congregation, appointed at its meeting, 14th May, 1868, a commission "to investigate the difficulties existing in the First Church, with a view, if possible, to restore peace and harmony."

That Commission met, but the withdrawal of the Relators' party from the congregation prevented the accomplishment of its pacific purpose.

The General Synod assembled in annual meeting at Pittsburg, the 20th of May, 1868. To that Synod Messrs. Gordon, Young, Stewart, Biggerstaff, Taylor, Guy, McMurray, and others applied by "remonstrance" for redress against the Trustees in possession. In reply to this "remonstrance," Synod adopted a preamble and series of resolutions, *inter alia*, referring "the whole matter pertaining to the difficulties existing in the First Reformed Presbyterian Church in Philadelphia, to a Commission of General Synod, who shall be clothed with synodical powers and have authority to issue the whole case," and directing the Commission to meet in the church, on June, 1868. The Synod at that Session arbitrarily and illegally suspended Mr. George H. Stuart, (who, it may be stated, without fear of contradiction, had done more for the First Congregation, and more for the denomination at large, than any other member of that Church, living or dead) from the membership of the church for the alleged crimes of using in the worship of God "imitations and uninspired compositions called Hymns," and of communing "with others in other churches in sealing ordinances."

The Reformed Presbytery of Philadelphia, at its meeting on 12th June, 1868, adopted a series of preambles and resolutions, asserting the proceedings of Synod in appointing a Commission and in suspending Mr. Stuart, to be contrary to the standards of the Reformed Presbyterian Church, to its Book of Discipline, to its terms of Communion, to its formula for ordination, and to numerous acts upon its records; and, therefore, suspending the relations of said Presbytery to the said Synod until the said action of Synod be revoked, or until further light be obtained, asserting the continuance of the members of the Presbytery with the Reformed Pres-

byterian Church, maintaining her organization, and endeavoring to develop and apply her principles in their proper application to the age and country in which they live.

The Synodical Commission, having by the Trustees in possession, been refused admittance to the First Church, met in the Fourth Church, on 17th June, 1868, and having issued citations, which were but once served upon Dr. Wylie, Messrs. Grant and Chambers of the Session, and the Trustees in possession, and upon no other corporators, they heard the testimony of one witness, Mr. Alex. Kerr, to the effect that the Reformed Presbytery of Philadelphia had suspended its relations to the General Synod, but, nevertheless, remained in the Reformed Presbyterian Church, and they then adopted a minute, stating that the Presbytery had seceded from the control of Synod, and had placed itself beyond the jurisdiction of Synod and of the Commission, and, therefore, declaring "Dr. McMurray and R. Guy, Ruling Elders, with the officers and members, whose names appear on the various papers submitted to Synod at its late meeting, and by Synod referred to this Commission, together with such others as may adhere to them, to be the First Reformed Presbyterian Congregation of Philadelphia, and as such entitled to all the rights and immunities appertaining thereto."

Shortly after that, and before the 1st July, 1868, Messrs. McMurray, Guy, Gordon, Young, Biggerstaff, Taylor, Stewart and Fletcher, and about seven pew-holders, who were not church-members, and about 272 members of the said congregation ceased to attend on the services of the church, or to occupy their pews in the church building. Since that time they have held services first in the old Horticultural Hall, and afterwards in the new Horticultural Hall. Four hundred and thirty-one church-members, and 27 pew-holders, who were not church-members, remained in possession of the church.

Since then, both parties have attempted to keep up the regular corporate succession, the Defendants' party on the first Monday of every year electing their Trustees in the church, and the Relators' party electing theirs in Horticultural Hall.

On the 17th May, 1869, the Reformed Presbytery of Philadelphia, adopted a memorial for presentation to Synod, explaining their action of 12th May, 1868, reasserting their membership in

the Reformed Presbyterian Church, transmitting to Synod certified copies of their action of 12th June, 1868, and of this Memorial, and appointing James Smyth, Esq., Commissioner, to present the same to Synod.

The General Synod assembled in annual meeting at Cedarville, Ohio, on the 19th May, 1869. On the 20th May, Mr. Smyth presented the memorial from the Philadelphia Reformed Presbytery, which, together with its accompanying documents, was read to the Synod. On the same day, but subsequently to the reading of the documents from the Presbytery, the Synod adopted a series of preambles and resolutions, reciting the action of the commission, and ratifying, approving, and adopting it as the action of General Synod.

On the 23d October, 1869, Hon. Wm. Strong and J. Sergeant Price, Esq., for the Relators, filed the "suggestion," Post, p. 15, upon which a writ of *quo warranto* was issued against the Defendants named in the suggestion, returnable the first Monday of January, 1870. On the return day Hon. Walter H. Lowrie, Hon. Wm. A. Porter, and C. S. Patterson, Esq., for the Defendants, obtained a rule upon the Relators, to show cause why the writ should not be quashed. The motion was argued on affidavits, 28th March, 1870, before Read, Agnew, and Sharswood, JJ., by Messrs. Lowrie and Patterson for the motion, and by Hon. Frederick Carroll Brewster, Attorney-General of Pennsylvania, and Mr. J. S. Price, *contra*.

For the motion it was argued:

1. The writ of *quo warranto* is issuable, not of right, but only in the discretion of the court.

5 *Bac. Ab.* 184 (*Tit. Information.*)

Commonwealth vs. Murray, 11 *S. & R.* 73.

" *vs. Reigart*, 14 *id.* 214.

" *vs. Arrison*, 15 *id.* 127.

" *vs. Jones*, 2 *J.*, 365.

" *vs. Cluley*, 6 *P. F. Sm.* 270.

2. The practice formerly was, to issue the writ only after rule upon defendants, to show cause why writ should not issue had been made absolute.

byterian Church, maintaining her organization, and endeavoring to develop and apply her principles in their proper application to the age and country in which they live.

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" *vs. Jones*, 2 *J.*, 365.

" *vs. Cluley*, 6 *P. F. Sm.* 270.

2. The practice formerly was, to issue the writ only after rule upon defendants, to show cause why writ should not issue had been made absolute.

Jones' Case, 2 *J.* 365.

3. The praetiee now is, to issue the writ upon special allocatur, but to allow the defendant his preliminary hearing upon a motion to quash.

Commonwealth vs. Farmers' Bank, 8 *H.* 415.

Woodward, J., p. 420. "All analogy and prineiple, show that the party respondent, must have a hearing before he is put to answer. This we allow him in a motion to quash the writ." "So that the respondent is seeure of his preliminary hearing, it matters little whether it be on a rule to show eause, or the less eumbrous motion to quash."

Commonwealth vs. McCutcheon, 2 *Pars.* 205.
" *vs. Cluley*, 6 *P. F. Sm.* 270.

Strong, J., p. 272. "The issue of the writ does not end the discretion of the court."

4. Upon rule to show cause, or motion to quash, where the material faets are not in dispute, the Court will examine into the merits suffieiently to satisfy themselves, that the relators are entitled to sue out the writ, and that there is a *prima facie* ease against the defendant.

A. Cases in which the Court held, that a *prima facie* ease was made out against the defendants, and, therefore, made the rule for the writ absolute, or diseharged the rule to quash.

Republica vs. Wray, 3 *Dall.*, 490.
Commonwealth vs. Douglas, 1 *Binn*, 77.
" *vs. Browne*, 1 *S. & R.*, 382.
" *vs. Meeser*, 8 *Wr.* 341.
" *vs. McCutcheon*, 2 *Pars.* 205.
" *vs. Commercial Bank*, 4 *C.* 383-391.

B. Cases in whieh the rule for the writ was diseharged, or the writ quashed.

a. Beeause the relator was not entitled to sue.

Commonwealth vs. Burrell, 7 *B.* 34.
" *vs. Farmers' Bank*, 8 *Har.* 415.
Same *vs. Same*, 2 *Gr.* 392.
" *vs. R. R. Co.*, 8 *Har.* 518.
" *vs. Cluley*, 6 *P. F. Sm.* 270.

b. Because no *prima facie* ease was made out against defendant.

Saving Institution Case, 1 *Wh.* 46.

Commonwealth vs. McCloskey, 2 *R.* 369.

In this case there were three defendants, and it was held that no *prima facie* case was made out against two of them, but was against the third. The Court, therefore, made the rule absolute as to the third, but discharged it as to the other two.

Commonwealth vs. Jones, 2 *J.* 365. The defendant was Mayor of Philadelphia, and the writ was quashed on three grounds. 1. That a private relator cannot sue out writ to question title to municipal office. 2. Relator's motives were bad. 3. No case against defendant was made out.

C. That the Court will on this motion give the defendants every advantage they would have had on the argument of a rule to show cause why the writ should not issue, and will quash the writ, unless the Relators satisfy the Court of their right to sue out the writ, and make out, on the facts in proof, a *prima facie* case of usurpation on the part of the defendant.

5. That there are no material facts in dispute, and that the Defendants are clearly entitled in point of law.

Against the motion it was argued:

1. That there are facts in dispute, and the case must, therefore, go to a jury.

2. That the Court will not on motion quash an information.

Cole on Crim. Inform., 70, 242, and other authorities.

3. That this is a proper case for the issuing of the writ.

On 10th March, 1870, Mr. Justice Read delivered the opinion of the Court, holding that the Court would quash a writ of *quo warranto*, only for "some defect in the suggestion itself, and not for any matter outside of it," and, therefore, expressing no opinion whatever on the merits. (*Vide* 14 *P. F. Sm.* 339.)

On the 26th March, 1870, the Court, upon the Relators' petition, under the Act of 13th April, 1840, § 12, (*Purd. Dig.* 834, § 18), amended the record by substituting Messrs. Williams, Johnston, Walker, Smyth, Porter, Pettigrew, and G. H Stuart, Jr., as Defendants, claiming to have been elected on the first Monday of January, 1870. On 5th July, 1870, the Court further amended the record by substituting 2d March, 1870, as the date of the defendant Stuart's intrusion into the office of a Trustee.

The pleas and replications having been filed, the cause came on for trial, Thursday, 9th March, 1871, at Nisi Prius, before Mr. Justice Williams and a jury, the Attorney-General of Pennsylvania and Mr. J. S. Price appearing for the Relators, and Messrs. Porter and C. S. Patterson for the Defendants. The Defendants' counsel moved for the right to begin and conclude, but Mr. Justice Williams held that the third plea threw the burden of proof on the Relators. The Relators then opened their case. On Friday, 17th March, the seventh day of the trial, the Defendants' case was opened. On Thursday, 30th March, the fourteenth day, the Relators opened in rebuttal. The 3d, 4th, and 5th of April were consumed by the arguments of counsel. On the 6th of April Mr. Justice Williams charged the jury, and on the 7th of April, the twentieth day of the trial, they were discharged, having failed to agree.

The material facts as developed at the trial have been stated. As to none of those facts was there any conflicting evidence, except as to the passage of the resolution to refer to arbitrators the decision of the validity of the election of 1868. The pleadings show that the action was brought to determine whether the Relators, elected in January, 1870, by the congregation in Horticultural Hall, or the Defendants, elected on the same day by the congregation in possession of the Church, were the Trustees of the corporation; or, in other words, whether the Hall party or the Church party constituted the corporation.

It will be observed in Mr. Justice Williams' charge, that he hinged the case upon the determination of a question of fact, as to which there was no conflict of evidence, viz.: whether the Relators' party in 1868 were "excluded from the church, and compelled "to leave 'by the defendants'" (*post.* p. 108). That their withdrawal was voluntary was an undisputed fact in the cause. If, therefore, the jury had been content to accept the Judge's view of the law, and to render a verdict according to the evidence, they would have found for the defendants. The majority of them, however, were not so content; for when they were discharged, they stood, eleven for the Relators, and one for the Defendants.

The result of the litigation up to this point is that the Defendants and their partisans remain in undisturbed possession of the church buildings and property.

PLEADINGS.

In the Supreme Court for the Eastern District of Pennsylvania.

Commonwealth of Pennsylvania, at the relation of George Gordon, John Biggerstaff, Ephraim Young, Robert C. Taylor, James Stewart, Robert Fletcher, and James Boyd, vs. *James Graham, William Ray, Thomas Johnston, Thomas M. Kerr, Charles Williams, Abram Walker, and James Smyth.*	*S. C.* *Jan. T.*, 1870. *No.* 109.

RELATORS' SUGGESTION FOR QUO WARRANTO.

City and County of Philadelphia, ss.

George Gordon, John Biggerstaff, Ephraim Young, Robert C. Taylor, James Stewart, Robert Fletcher, and James Boyd, who sue for the Commonwealth in this behalf, come here into court and for the said Commonwealth, give the court here to understand and be informed that James Graham, William Ray, Thomas Johnston, Thomas M. Kerr, Charles Williams, Abram Walker, and James Smyth, all of the City and County of Philadelphia, since the fourth day of January in the year of our Lord, one thousand eight hundred and sixty-nine, have exercised, and do still exercise, within said City and County without lawful authority, the franchises and privileges of Board of Trustees of "The First Reformed Presbyterian Congregation in the City of Philadelphia." That the said "The First Reformed Presbyterian Congregation in the City of Philadelphia," is a corporation (duly organized under an act of the General Assembly of the Commonwealth of Pennsylvania, approved the sixth day of April, in the year of our

Lord, seventeen hundred and ninety-one, as will appear by the following charter.

CONSTITUTION

OF THE

FIRST REFORMED PRESBYTERIAN CONGREGATION

IN THE

CITY OF PHILADELPHIA.

To all whom these presents may come, know ye, that we whose names are hereunto subscribed, citizens of the Commonwealth of Pennsylvania, having associated together for the worship of Almighty God agreeably to the Gospel of Jesus Christ, and desirous of acquiring the powers and immunities of a body politic in Law according to an Act of Assembly of the Commonwealth of Pennsylvania, passed the sixth day of April, in the year of our Lord one thousand seven hundred and ninety-one, *Do hereby Declare* that we have associated ourselves together for the purpose aforesaid by the name, style and title, and under the Articles and Conditions following, *to wit*:

ARTICLE 1. That the name, style and title of this Corporation shall be "THE FIRST REFORMED PRESBYTERIAN CONGREGATION IN THE CITY OF PHILADELPHIA."

ART. 2. That the subscribers and such others, being citizens of this Commonwealth, as shall hereafter become members of the said Congregation, and who adhere to and maintain the system of religious principles declared and exhibited by the Reformed Presbyterian Synod of North America, shall become and be a Corporation or body politic, in law and in fact, to have continuance by the name, style and title aforesaid, and shall have full power to make, have and use one Common Seal, with such device as they shall think proper, and the same to make, alter and renew at pleasure, and by the name, style and title aforesaid shall be capable to sue and be sued, plead and be impleaded in any Court or Courts, before any Judge or Judges, Justice or Justices in all manner of suits, complaints and pleas whatsoever, and all and

every matter therein to do as fully and effectually as any person or persons, as bodies politic within this Commonwealth, may or can do; and shall be authorized to make Rules and By-Laws, and do everything necessary for the good government and management of the affairs of this Corporation. Provided always, that such Ordinances be not repugnant to the laws of the United States, or of this Commonwealth or this instrument.

Art. 3. That the said Congregation, by the name, style and title aforesaid, shall be able and capable in law, according to the terms and conditions of this Instrument, to take, receive and hold all manner of lands, tenements, rents, annuities, franchises and hereditaments, and any sum or sums of money, and any manner of goods and chattels which may now be in its possession, or may be hereafter acquired by bequest or donation, to be disposed of according to the Articles and Conditions of this Instrument, and the By-Laws of this Corporation, or the will of the donors. Provided always, that the clear yearly value or income of the Estate, of whatever name or species of property or possession of the Congregation, shall not exceed Five Hundred Pounds.

Art. 4. That there shall be a Board of Trustees, which shall consist of seven members, who shall be recognized by the Session of this Congregation as being in full communion with this Church.

Art. 5. That there shall be an annual election for the members of the Board of Trustees on the first Monday of every year, of which notice shall be given two weeks previous from the pulpit. The election shall be by ballot, in the Church.

Art. 6. That the persons capable of electing shall be all who are in full communion with the Congregation, as well as all pew-holders though not in full communion.

Art. 7. That in case of a vacancy in the Board, by death, resignation, removal or otherwise, the President of the Board shall call, within two weeks, a Congregational meeting, giving at least one week's notice, to fill such vacancy until the next election.

Art. 8. That the power of the Board of Trustees shall extend only to the temporalities of the Church, in taking care of the property of the Congregation, and without the authority of a

majority of the Congregation they shall not expend a sum exceeding One Hundred Dollars.

Art. 9. That the Trustees, four of whom shall form a quorum, shall meet on the first Monday after their election, and afterwards as business may require. They shall choose from among themselves a President and Treasurer, and from others, if they think proper, a Secretary and Sexton.

Art. 10. That the Trustees shall have power to make By-Laws for their own regulation. Provided they are proposed eight days before enacted, and not contrary to this Instrument.

Art. 11. That the Trustees shall lay before the Congregation, at the annual election, a full account of all their transactions.

Art. 12. That none of the real estate of the Congregation shall be alienated without authority from the Congregation.

Art. 13. That meetings of the Trustees shall be called by the President, of his own accord, or at the desire of any two members, due notice being given.

Art. 14. That when a Congregational meeting shall be called, three days at least must intervene between the notification and the meeting.

Art. 15. That Congregational meetings may be called by the Trustees, or at the request of any six pew-holders. The voters at the Congregational meetings shall be such as are entitled to vote at the election of Trustees.

Art. 16. That the salary of the Pastor shall be fixed by a majority of the Congregation.

(Signed) James R. Willson,
Francis S. Beattie,
Alexander Henry,
Wm. Henry,
Alexander Cowan,
Samuel Willson,
Sam'l W. Crawford.

Approved by Attorney-General and Justice of Supreme Court, January 22, 1816.

Secretary of State directed by Governor Snyder to enroll, March 19, 1816.

Enrolled in Secretary's office at Harrisburg, on March 19, "1816, in book No. 2, page 152, "containing a record of Acts "incorporating Sundry Religi- "ous, Charitable and Literary "Societies."

ADDITION TO THE CONSTITUTION

OF THE

FIRST REFORMED PRESBYTERIAN CONGREGATION,

IN THE

CITY OF PHILADELPHIA.

WHEREAS, By the Constitution of the above-named Corporation (to which this is a supplement), authority to mortgage any real estate, of which the said Corporation might become seized, has not been explicitly given: AND WHEREAS, the said Corporation is desirous of procuring a sum of money for the purpose of paying off the principal of a certain rent-charge, now chargeable on a certain lot of ground whereon they have erected a building for public worship, which rent-charge will become irredeemable after the twenty-fourth day of January, 1829: AND WHEREAS, certain individuals have loaned to the said Congregation sums of money, and have made themselves personally responsible for certain loans made by others to the said Congregation, who are desirous to secure to such individuals the re-payment of the loans, and to indemnify them from the responsibilities aforesaid: The said Corporation hereby declare that the following Article shall be held and taken for and as a part of their original Constitution.

ART. 17. The President and Secretary shall have authority (the approbation of the Board of Trustees and the consent of a majority of the Congregation having been first obtained), to mortgage the lot situated at the south-east corner of Eleventh and

Marble Streets, in the city of Philadelphia, with the building or buildings thereon erected, for the purpose of obtaining funds to pay off the principal of the ground-rent now chargeable on said premises, and shall, under their hands and the corporate seal of the Congregation, execute a mortgage or mortgages in fee simple to the lender or lenders of such sum or sums of money as shall be necessary for that purpose; and may, under their hands and the corporate seal as aforesaid, execute to such individuals as have loaned or may loan to the said Corporation, or as have become responsible for loans made or to be made to the said Corporation, such mortgage or mortgages of any real estate of which the said Congregation is or may become seized, as shall be necessary to secure or indemnify the said individuals for the loans or responsibilities aforesaid.

At a meeting of the Members and Trustees of the First Reformed Presbyterian Congregation in the City of Philadelphia, convened after due public notice on the twentieth day of November, A. D. 1828, it was unanimously

Resolved, That the within seventeenth Article be adopted and added to the original Constitution of the Congregation, which was established in conformity with the Act of Assembly of the State of Pennsylvania of 6th April, 1791, and enrolled in the office of the Secretary of the Commonwealth on the 19th day of March, 1816, as an alteration and amendment of the same.

In testimony whereof, the President and Secretary of said Corporation have hereunto set their hands and affixed the corporate seal.

{ *ss.* } (Signed) WILLIAM HENRY, *President*,
Attest (Signed) WILLIAM H. SCOTT, *Secretary*.

Approved by Attorney-General, Nov. 22, 1828.
Approved by Justices of Supreme Court, Dec. 17, 1828.

Certificate of Prothonotary of Supreme Court that supplement was presented to Supreme Court Judges, was allowed by them, and was so certified, Dec. 17, 1828.

Secretary of State directed by Governor Schultze to enroll, Dec. 22, 1828.

Enrolled in Secretary's office at Harrisburg, on December 22, 1828, in Charter Book, No. 4, containing a record of Acts incorporating sundry Literary, Charitable and Religious institutions.

That at the regular annual election for the members of the Board of Trustees of said Congregation, held in accordance with the terms of the Charter, on the first Monday of the year, viz.: on the fourth day of January, A. D., 1869, the said George Gordon, John Biggerstaff, Ephraim Young, Robert C. Taylor, James Stewart, Robert Fletcher, and James Boyd were in due and regular form of Law elected as a Board of Trustees of said Congregation, and have been recognized by the Session of the said Congregation as being in full communion with the said Church. But notwithstanding the premises and the said election, they, the said James Graham, William Ray, Thomas Johnston, Thomas M. Kerr, Charles Williams, Abram Walker and James Smyth, have, during all the time since the said the fourth day of January, A. D. 1869, used and do still use the franchises, offices, privileges and liberties of a Board of Trustees of the said, "The First Reformed Presbyterian Congregation in the City of Philadelphia," and during the said time have usurped and do usurp upon the Commonwealth therein, to the great damage and prejudice of the constitution and laws thereof. Wherefore the said relators for the said Commonwealth do make suggestion and complaint of the premises, and pray the due process of law against the said James Graham, William Ray, Thomas Johnston, Thomas M. Kerr, Charles Williams, Abram Walker, and James Smyth, in this behalf, to be made to answer to the said Commonwealth by what warrant they claim to

have, use and enjoy the franchises, offices, privileges and liberties aforesaid.

GEORGE GORDON,
EPHRAIM YOUNG,
JOHN BIGGERSTAFF,
JAMES STEWART,
ROBERT C. TAYLOR,
ROBERT FLETCHER,
JAMES BOYD.

George Gordon, being duly sworn, deposes and says that the statements in the foregoing suggestions are true as he firmly believes.

GEORGE GORDON.

Sworn and subscribed before me this first day of October, A. D., 1869.

THOS. DALLAS, *Alderman.*

J. SERGEANT PRICE,
WILLIAM STRONG,
of Counsel.

Defendants' Pleas.

And now this 31st day of October, A.D., 1870, come Charles Williams, Thomas Johnston, James Smyth, Abram Walker, William G. Porter, and John Pettigrew, by Chris. Stuart Patterson, their attorney, and protesting that the suggestion and petition filed in this case and amended by the order of Court, made on the 26th day of March, 1870, directing that George Gordon, John Biggerstaff, Ephraim Young, Robert C. Taylor, James Stewart, Robert Fletcher, and James Boyd, as Relators, and the Defendants abovenamed, with George H. Stuart, Jr., as Defendants, be substituted of record in this case, are altogether insufficient in law, and that they need not according to the law of the land to make answer thereunto, nevertheless, for a plea in this behalf they say that the said Commonwealth ought not to implead them by reason of the premises in the said suggestion and petition set forth, because they say that true it is that the said The First Reformed Presbyterian Congregation in the City of Philadelphia is a corporation duly organized under an Act of the General Assembly of the Commonwealth of Pennsylvania, approved on the 6th April, A.D. 1791, and that the charter of the said corporation is as the same is set forth in the said suggestion.

And these defendants further say that they were duly elected and chosen Trustees of the said corporation in accordance with the said charter thereof, in manner following, that is to say the annual meeting of the said corporation, for the election of the members of the Board of Trustees thereof, was held in accordance with the said charter on the first Monday of January in the year A.D. 1870; to wit, on the 3d day of January, A.D. 1870, in the church owned, occupied and used by the said corporation, to wit, the church building situated on the East side of Broad Street, South of Spruce Street in the said City of Philadelphia, of which meeting and elec-

tion, and of the time and place of holding the same, notice had been given, two weeks previously from the pulpit, in the church aforesaid. At the said corporate meeting an election by ballot was held by the duly qualified corporators then and there present, and the said Charles Williams, Thomas Johnston, James Smyth, Abram Walker, William G. Porter and John Pettigrew, together with Thomas M. Kerr, received a majority of the ballots then and there cast, at the said election, by the said duly qualified corporators then and there present, and they, the said defendants, and the said Thomas M. Kerr, were afterwards, to wit, on the said third day of January, A.D. 1870, recognized by the session of the said First Reformed Presbyterian Congregation in the City of Philadelphia, as being in full communion with the said church, to wit the said The First Reformed Presbyterian Congregation in the City of Philadelphia.

By virtue of which said election, the said defendants became lawfully authorized and entitled with the said Thomas M. Kerr to exercise the office of Trustees of the said corporation, and to have, use and enjoy the franchises, liberties and privileges thereunto appertaining.

And the said defendants further say that on the first Monday after their election, to wit, on the 10th day of January, A.D. 1870, they the said defendants accepted and took upon themselves the said offices, and met and chose a President, a Treasurer, a Secretary, and a Sexton, and from thenceforth they have by virtue of the said election and by that warrant exercised, and do still continue to exercise in the City of Philadelphia, the said offices of Trustees of the said corporation, and the franchises, liberties and privileges thereunto belonging, as they well might and still may; without this, that they, the said defendants, the said offices, liberties, franchises and privileges in the said suggestion and petition mentioned, or any of them have usurped or do usurp against the said Commonwealth in manner and form as in the said suggestion and petition is above alleged against them, all which they the said defendants are ready to verify and prove as the Court shall award. Whereupon they pray judgment, and that the offices, franchises, liberties and privileges by them claimed in form aforesaid may be allowed and adjudged to them, and that they may be dismissed

and discharged by the Court of and from the premises above charged upon them.

2. And now this 31st day of October, A.D. 1870, comes George H. Stuart, Jr., by Chris. Stuart Patterson, his attorney, and protesting that the suggestion and petition filed in this case and amended by the order of Court, made on the 26th day of March, 1870, directing that George Gordon, John Biggerstaff, Ephraim Young, Robert C. Taylor, James Stewart, Robert Fletcher, and James Boyd, as Relators, and Charles Williams, Thomas Johnston, James Smyth, Abram Walker, William G. Porter, John Pettigrew, and George H. Stuart, Jr., as Defendants, be substituted of record in this case; and as further amended by the order of Court, made on the 5th day of July, 1870, directing that the record be amended by inserting the date 2d March, 1870, instead of the first Monday of January, 1870, as the time, at which George H. Stuart, Jr., claims to have been elected a Trustee of the said The First Reformed Presbyterian Congregation in the City of Philadelphia are altogether insufficient in law, and that he need not according to the law of the land to make answer thereunto, nevertheless, for a plea in this behalf, he saith, that the said commonwealth ought not to implead him by reason of the premises in the said suggestion above specified, because he says that true it is that the said The First Reformed Presbyterian Congregation in the City of Philadelphia, is a corporation duly organized under an Act of the General Assembly of the Commonwealth of Pennsylvania, approved on the 6th day of April, A.D. 1791, and that the charter of the said corporation is as in the said suggestion above set forth, and this defendant further says, that Thomas M. Kerr, one of the Trustees of the said corporation, having resigned his said office, heretofore, to wit, on the 3d day of January, A.D. 1870, the said resignation to take effect on the 10th day of February, A.D. 1870, and the said resignation having been duly accepted by the said corporation, Charles Williams, the President of the Board of Trustees of the said corporation, called within two weeks after the taking effect of the said resignation as aforesaid, to wit, on the 20th day of February, A.D. 1870, a congregational meeting to be held on the second day of March, A.D. 1870, to fill such vacancy until the next election, of which said meeting and of the purposes for which the same

was summoned more than one week's notice was given, to wit, by the reading on two Sabbaths, to wit, on the 20th and 27th days of February, A.D. 1870, of the said call and notice therefor from the pulpit in the church, to wit, the said church situated on the East side of Broad Street, South of Spruce Street in the City aforesaid, and this defendant further saith that a meeting of the said corporation was duly held in accordance with the said call and summons, in the church aforesaid on the 2d day of March, A.D. 1870, and at the said meeting an election was held by ballot to fill the said vacancy, in the said office, and this defendant then and there received a majority of all the ballots cast by the duly qualified electors, then and there present, and afterwards, to wit, on the said 2d day of March, A.D. 1870, this said defendant was recognized by the session of the said congregation as being in full communion with this church, to wit, The First Reformed Presbyterian Congregation in the City of Philadelphia, by virtue of which said election he became lawfully authorized and entitled (with the said Charles Williams, Thomas Johnston, James Smyth, Abram Walker, William G. Porter, and John Pettigrew), to exercise the office of a Trustee of the said corporation, and to have, use and enjoy the franchises, liberties and privileges thereunto appertaining, and the said defendant did thereupon accept and take upon himself the said office, and by virtue of the said election, and by that warrant has from thence exercised, and does still exercise the said office, in the City aforesaid, and claims to have, use and enjoy the franchises, liberties and privileges thereunto appertaining as he well might, and still may; without this, that he, the said defendant, the said offices, liberties, privileges and franchises in the said suggestion and petition mentioned, or any of them has usurped or does usurp against the said Commonwealth, in manner and form as in the said suggestion and petition, is above alleged against him, all which the said defendant is ready to verify and prove as the Court shall award. Whereupon, &c.

3. And by the leave of the Court for this purpose first had and obtained, for a further plea to the suggestion and petition filed in this case, as amended by the order of Court, made on the 26th day of March, 1870, directing that George Gordon, John Biggerstaff, Ephraim Young, Robert C. Taylor, James Stewart, Robert

Fletcher, and James Boyd, as Relators, and Charles Williams, Thomas Johnston, James Smyth, Abram Walker, William G. Porter, John Pettigrew, and George H. Stuart, Jr., as Defendants, be substituted of record in this case; and as further amended by the order of Court, made on the 5th day of July, 1870, directing that the record be amended, by inserting the date, 2d March, 1870, instead of the first Monday of January, 1870, as the time, at which George H. Stuart, Jr., claims to have been elected a Trustee of the First Reformed Presbyterian Congregation in the City of Philadelphia; the said Charles Williams, Thomas Johnston, James Smyth, Abram Walker, William G. Porter, John Pettigrew, and George H. Stuart, Jr., by their said attorney, say that the said Relators have not been, for some time past, to wit, since the first day of July, A.D. 1868, and are not now, corporators of the said corporation, without this, that the said Relators or any of them were, on the first Monday of January, 1870, to wit, on the 3d day of January, A.D. 1870, or at any other time before or since, in due and regular form of law elected Trustees of the corporation in manner and form as in the said suggestion and petition is above alleged. All which matters and things they the said defendants are ready to verify and prove, as the Court shall award.

Whereupon they pray judgment, and that the offices, franchises, liberties and privileges by them claimed in form aforesaid, may be allowed and adjuged to them, and that they may be dismissed and discharged by the Court, of and from the premises above charged upon them.

CHRIS. STUART PATTERSON,
WILLIAM A. PORTER,
OF COUNSEL.

Relators' Replications.

And the said Relators who proseeute for the Commonwealth in this behalf, having heard the pleas of the said Charles Williams, Thomas Johnston, Abram Walker, James Smyth, William G. Porter, John Pettigrew, and George H. Stuart, Jr., in manner and form aforesaid, above pleaded in bar to the said suggestion of the Commonwealth say, that by reason of anything in the first plea alleged, the said Commonwealth ought not to be barred from having the said suggestion and petition against the said Charles Williams, Thomas Johnston, Abram Walker, James Smyth, William G. Porter, and John Pettigrew, beeause, protesting the said first plea and the matter therein eontained are not suffieient in law to bar the said Commonwealth from having the aforesaid suggestion and petition against the said Charles Williams, Thomas Johnston, Abram Walker, James Smyth, William G. Porter, and John Pettigrew, to whieh first plea in manner and form above pleaded, the said Relators are under no necessity nor in any ways obliged by the law of the land to answer; for replieation, nevertheless, the said Relators say that the said Charles Williams, Thomas Johnston, James Smyth, Abram Walker, William G. Porter, and John Pettigrew, together with Thomas M. Kerr, did not, on the first Monday of January, A.D. 1870, in the first plea mentioned, aeeording to the provisions of the said Charter of the First Reformed Presbyterian Congregation in the City of Philadelphia, reeeive a majority of the ballots of the duly qualified eorporators of said eongregation in the manner and plaee and form as in the said first plea alleged, and were not at that time in aecordanee with the said Charter duly eleeted and ehosen Trustees of said Corporation, nor were they at that time in full eommunion with said ehurch, or duly recognized by the session of the said "The First Reformed Pres-

byterian Congregation" as being in full communion with said church; and the said Relators put themselves on the country, &c.

2. And the said Relators do further say, that by reason of anything in the second plea alleged, the said Commonwealth ought not to be barred from having the said suggestion, and petition against the said George H. Stuart, Jr., because, protesting that the said second plea, and the matters therein contained, are not sufficient in law to bar the said Commonwealth from having the aforesaid suggestion and petition against the said George H. Stuart, Jr., to which second plea in manner and form above pleaded, the said Relators are under no necessity, nor in anyways obliged by the law of the land to answer; for replication, nevertheless, the said Relators say, that the said Thomas M. Kerr, in said second plea mentioned, was not, on the 3d day of January, A.D. 1870, one of the Trustees of the said "The First Reformed Presbyterian Congregation in the City of Philadelphia," and no resignation of his office was accepted by said corporation. That no congregational meeting of said corporation was called by the President of the Board of Trustees of said Church, or held at the time, or in the place, manner or form as in second plea mentioned. That there was no election held by ballot on the second day of March, A.D. 1870, to fill a vacancy in the Board of Trustees of said Church, and the said defendant, George H. Stuart, Jr., did not then and there receive a majority of, or any ballots cast by the duly qualified electors of said corporation, and the said defendant was not on that day in full communion with the said Church, or recognized by the session of the said congregation as being in full communion with the said church, to wit, "The First Reformed Presbyterian Congregation in the City of Philadelphia," and that the defendant did not, by virtue of any election at that time, become lawfully authorized and entitled with Charles Williams, Thomas Johnston, James Smyth, Abram Walker, William G. Porter, and John Pettigrew, to exercise the office of Trustee of said Corporation, or have, use, or enjoy, the franchises, liberties, or privileges appertaining thereunto. And the said Relators put themselves upon the country, &c.

3. And the said Relators do further say, that by reason of anything in the third plea alleged, the said Commonwealth ought not

to be barred from having the said suggestion and petition against the said defendants, Charles Williams, Thomas Johnston, James Smyth, Abram Walker, William G. Porter, John Pettigrew, and George H. Stuart, Jr., because protesting that the said third plea, and the matters therein contained, are not sufficient in law to bar the said Commonwealth from having the aforesaid suggestion and petition against the said defendants, to which third plea in manner and form above pleaded, the said Relators are under no necessity, nor in any way obliged to answer; for replication, nevertheless, the said Relators say, that the Relators were, on the first day of July, A.D. 1868, and before that day, and ever since that time, and are now, corporators of said corporation, and are, in due and regular form of law, elected Trustees of said Corporation.

And of this the said Relators put themselves upon the country, &c.

J. SERGEANT PRICE,
F. CARROLL BREWSTER,
For Relators.

NOTE.—It will be observed that the following speeches of Counsel were delivered extempore, and are printed from the stenographer's report. The reader will, therefore, not expect to find in them the literary finish which may be reasonably looked for in orations committed to writing before delivery.

Monday, 3d April, 1871.

Mr. Patterson, in opening the argument for the Defendants, said, in substance ;

May it please your Honor : Gentlemen of the Jury ;

I agree with my friend, Mr. Price, in his congratulations upon our approach to the termination of this very protracted trial. I agree with him also, [I state this with the more pleasure, because there are very few of the statements which he has made to you in which I am so fortunate as to be able to concur], in his regret that so much irrelevant testimony has been introduced into this cause. It is too late now to discuss the question of responsibility for the introduction of such testimony ; but, I am perfectly willing to submit this, in common with all the other questions in this cause, to your impartial determination, for I feel assured, that you have by this time recognized the fact that the Defendants have had but one desire, which was to meet and answer every charge which the Relators have made against them.

The issues in this case, upon which you, Gentlemen of the Jury, are, under the law and the evidence to make up your verdict, are these ;

First, Were the Defendants elected Trustees on the first Monday of January, 1870 ?

Second, Was Mr. George H. Stuart, Jr., elected a Trustee on 2d March, 1870 ?

Third, Were the Relators on the first of July, 1868, and have they since been, Corporators of the First Reformed Presbyterian Congregation in the City of Philadelphia ?

The Relators originally brought this action to try title to the offices of Trustees for 1869. Subsequently, under the advice of able and learned counsel, they amended the record, so as to try the title of the Trustees for 1870. You will see from this, Gentlemen of the Jury, that the titles of the Trustees for 1868 are not directly involved in this inquiry, and are indirectly involved, only

in so far as the determination of that question can have a bearing upon the issues raised by the pleadings in this case. But how can it have any bearing upon those issues? Even if the Relators could show that they had been elected in 1868, it would not necessarily follow that they were elected in 1870, nor would it have any tendency to prove that they were Corporators on the first day of July, 1868, six months after the election of 1868. As I have shown you, the pleadings in this cause gave us no reason to suppose that the Relators would on the trial introduce any evidence with regard to the election of 1868, and we had no express notice of any such intention on their part. They brought it in, therefore, thinking that we would not be ready to meet it, but, Gentlemen, we have met it, and we have vindicated, to your entire satisfaction, I am sure, the course of the Defendants and their friends in regard to that election.

The troubles in this Congregation were approaching their climax in the latter part of the year 1867.

Much has been said to you about the Union Meetings that were held in the Church at that time. My learned friend, Mr. Price, went so far as to charge that these meetings were called for the purpose of fomenting dissensions in the Congregation. If that be so, the responsibility therefor rests upon the Synod, because it was the Synod, meeting in New York, in 1867, that initiated the discussion of an organic union between the different denominations adhering to the Presbyterian faith and form of church government. It was the Synod that called the Union Convention which met in this Church in October, 1867. One of the most prominent men in that Convention was the Rev. Dr. McLeod, of New York. The Relators have produced him here as a witness. They have asked him many questions, but they did not ask him to tell why the Convention was held, to go into its history, to state what official position he held in it, and what part he took in its deliberations. He gave us no information on these points. Nor have the Relators been more ready to bring to your notice the true history of the congregational Union Meetings.

Now, Gentlemen, the purpose of that Union Convention of 1867, and the work effected by it, has been much misunderstood. That Convention did not take any definitive action. It simply

adopted a basis of union which it recommended to the highest judicatories of the respective denominations, in order that those bodies might, if they approved of it, form upon that basis an organic union of the Churches severally represented by them. It was, therefore, the purpose of the Convention, not to detach this, or any other congregation, from the Reformed Presbyterian Church but to suggest to the Synod, for legislative action by it, a basis upon which the Synod and every congregation represented by it could unite with the other members of the great Presbyterian family. When, therefore, this particular Congregation came in November and December, 1867, to discuss this basis of union, they considered it, not with reference to any separate action on their part, but only with reference to the formation and expression of the opinion of the Congregation as to the action which ought, upon the subject of union, to be taken by their representatives in Synod assembled. But, Gentlemen, it has been said again and again in the progress of this cause that if that union had been consummated the denomination to which this Congregation belongs would have been compelled to relinquish their most distinctive characteristic, that is, the exclusive use in public praise of the metrical version of the Psalms of David. The basis of union says upon this point (Minutes Presbyterian National Union Convention, Philadelphia, 1867, p. 143): "IV. The Book of Psalms, which is of Divine "inspiration, is well adapted to the state of the Church in all ages "and circumstances, and should be used in the worship of God. "Therefore, we recommend that a new and faithful version of the "Psalms be provided as soon as practicable. But inasmuch as "various collections of Psalmody are used in the different Church-"es, a change in this respect shall not be required."

I have thus shown you that there could not have been on the part of those of the Defendants and their friends who participated in the Convention, and in the subsequent Congregational Meetings, any purpose to carry this congregation over to the Presbyterian Church, or to make it anything else than what it always has been and is still, a Congregation of the Reformed Presbyterian Church. I have shown you also that there could not have been, on the part of those same persons, any purpose to abandon the ancient

Psalmody or to introduce into the public worship of the Church, the much-dreaded hymns, unless and until such change should be authorized by the law of the Church. It is undoubtedly a crime to break the laws of the church, but it is not a crime to discuss the propriety of a change in those laws. It is not a crime in the members of any Christian church to desire to form a union with another denomination, with whom they are at one in all the essentials of the Christian faith. If that be a crime what shall be said for those members of, for those clergymen lately in, the Reformed Presbyterian Church, who after discussing and agitating for a union with the United Presbyterian Church, have now taken the law into their own hands, and severally seceded to that Church? If it be a crime to desire an organic union of two denominations, who shall defend Dr. McMaster (the Chairman of that Synodical Commission, of which you have heard so much in this case), who failing to effect the organic union he desired, has not, like the Reformed Presbytery of Philadelphia, remained in the church, but has formed another ecclesiastical connection? Now, all that the Defendants and their partisans have done, has been to ask the proper ecclesiastical authority, that is, the Synod, for action in this matter of union. So far as regards breaking the laws of the Church is concerned, I shall show you beyond possibility of doubt or cavil, that those who have broken its laws are the Synod, not the Presbytery, the Relators, not the defendants.

In the next place I come to consider the testimony with regard to the election of 1868. I shall pass as briefly as possible over this irrelevant mass of evidence, touching only upon one or two salient points.

First, there is the conspiracy, that mysterious conspiracy, of which we have not heard one word, until my friend Mr. Price came to sum up the argument, to which he did not refer in his opening speech, and of which there is not one scintilla of proof in the cause. What is this alleged conspiracy? A plot or combination to prevent the election of the Relators in 1868. Who are the alleged conspirators? The Defendants in this cause, all of them gentlemen of high character and well known in this community, and combining with them such men as the Rev. Dr.

Wylie, and Mr. George H. Stuart. Is it probable that such men would conspire to defraud any one of his rights? But look at the facts in proof. The witnesses on both sides concur in characterizing the Congregational Meeting of 1868, as very crowded and very disorderly. You have heard from witness after witness graphic descriptions of the various manifestations of that disorder, the hissing, hooting, cries of "Psalms *vs.* Hymns," the sounds as of steam whistles in a tunnel. It is clear that this disorder was not created by the Defendants or by their friends, for it was all directed against them, and it was loudest and most uncontrollable, when any partisan of the Defendants attempted to speak. I have too much respect for the Relators and their partisans in the congregation to believe that any of them were participants in that disorder. I must believe that it was all created by those strangers who were brought in from the street to vote the Relators' ticket. On this point you will remember, Gentlemen, that we have called very many witnesses, among them, some of the oldest members of the Congregation, who have told you that they saw at that meeting and in the line of voters, the faces of many people whom they had never seen in the church before. The subsequent revision of the list of voters, to which I shall refer presently, abundantly confirms this evidence of the participation of strangers in the election. You have heard the minutes of that meeting read as recorded by the Secretary, Mr. Thomas Johnston. Those minutes are in the main corroborated both by the witnesses for the Relators, and by those for the Defendants. But on one point, that of the passage of the resolution to refer to arbitration the question of the election, there is a conflict of evidence. The minutes say; "at the conclusion "of the balloting and previous to the report of the Tellers, it was "on motion ordered that the votes polled remain in the custody "of the tellers until the list of the parties voting be submitted to "the session and Board of Trustees, for their examination, in "order to ascertain whether all the votes cast were legal, protests "against certain votes having been entered during the progress "of the balloting, and no certificates of election to be given until "it had been ascertained that no illegal votes had been cast. "Several other motions were offered touching the question, but "were afterwards withdrawn. It was then asked, could not the

"votes be counted and a report of the same be made to the "meeting. After some discussion this was finally agreed to, with "the understanding that the validity of the election be under the "restriction imposed by the former resolution." My learned friends say that no such resolution was passed, but we have supported the Minutes, and proved by a cloud of witnesses the passage of the resolution in those terms. I shall not comment upon their testimony. I shall simply read over to you the names of those who upon their solemn oaths have said in your presence that that resolution was passed. You heard the examination of each one of those witnesses; you saw how particular we were in calling the attention of each one to the terms of the resolution; how careful we were to ask of each, who had moved the resolution, who seconded it, whether the question was put by the chair, whether there was a vote upon it, and lastly, whether it was carried. You heard the clear and distinct answers of the witnesses upon all these points, all concurring as to the terms of the resolution, the vote upon it and its passage. You saw that the witnesses were men of character, men to whom the taking of a judicial oath and the giving of testimony in a court of justice, is no light matter, and, as you heard them, you were impressed with their belief in the truth of their testimony. You saw also, Gentlemen of the Jury, that the Counsel for the Relators were so impressed with the truth of the testimony of these witnesses that they did not cross-examine one of them on this point. These witnesses are James Graham, chairman of the Meeting, Thomas Johnston, its Secretary, Chambers, and John Pettigrew, two of the four tellers, Dr. Faires, Messrs. Grant, Ray, T. M. Kerr, James Smyth, Black, W. J. Faires, Martin, Dick, Henry, Williams, J. G. H. Pettigrew, George H. Stuart, Hutchison, Theodore Graham, Jackson, Geo. H. Stuart, Jr., Brown, Neely, Marshall Scott, George H. Smith; twenty-five in all. Two of these witnesses, Messrs. Graham and Johnston, the Chairman and Secretary of the Meeting, stood so high in the opinion of the whole congregation, and were believed to be so far above the party conflict which was agitating the congregation, that they were not only unanimously selected as officers of the Meeting, but they were also nominated by both parties as candidates for election as Trustees; yet these are the

men who are now charged with the crime of falsifying the Minutes. But, Gentlemen, we have disproved that charge. We have supported the Minutes by the mass of testimony, to which I have referred. We have proved that the resolution of reference was passed, and that Dr. McMurray himself favored its passage. Upon what testimony do the Relators rely in opposition to this? They produce eight witnesses, Messrs. McMurray, Young, Biggerstaff, James Stewart, Tait, McIlwain, McLeod, and Taylor, who, with wonderful unanimity, agree in stating that the resolution of reference was offered, but that it was not passed; yet no one of these gentlemen can tell you what became of the resolution. Now is it reasonable to suppose that if each one of them had given to you his fair and honest recollection, some one of them would not have been able to tell you what was done with the resolution? Surely a matter so important as the disposition made of a proposition to arbitrate that contested election, must have impressed itself upon their minds. Remember, Gentlemen, that one at least of those witnesses, Mr. Ephraim Young, is a man of really extraordinary power of memory. He was able after the lapse of more than three years, to tell you with literal accuracy how many votes each one of twelve candidates received at that election of 1868; and yet he cannot tell you what became of the resolution. You will remember also, Gentlemen, that these eight witnesses for the Relators agreed in the statement that though no resolution of reference was passed, that yet there was by general consent an agreement that the Session and Board of Trustees might examine the list of voters, not as Arbitrators, not with a view to determine anything, but simply "for their own satisfaction." Is not the absurdity of that patent? It required no general agreement to authorize the Session and Board of Trustees to do that; what satisfaction could it be to them to perform the onerous duty of scrutinizing the list, when their examination was to decide nothing?

I have endeavored, Gentlemen, at every stage of this unhappy litigation, in which I have been brought into contact with these Relators, to treat them with kindness and courtesy. I do not now propose to alter my course in that respect. I shall not, therefore, speak harshly of these eight witnesses. But I am bound to call

your attention to the wonderful uniformity of their testimony not only upon the main points, but also upon all the minor and unimportant details; and to suggest to you in all kindness to them, that the best explanation of that coincidence is this, that these witnesses have intended to tell you the truth, but that, during the last three years, they have talked the matter over so often among themselves, that they have come to believe that to be the fact which they wished to be the fact, and that some one man, of stronger character than the rest, has impressed his version of the story upon them so strongly, that it has, so to speak, become stereotyped in their memories; and in this way they have told here a story, which is as different from the truth, as night from day, or darkness from light. But there are two partisans of the Relators, who do not support these eight witnesses. First, Mr. George Gordon, for whose character I entertain a very sincere respect. Mr. Gordon admits that there was an agreement of reference, though no resolution to that effect was passed. Next Mr. Robert Guy, one of the Relators' elders, the oldest member of their Congregation, and a gentleman, the integrity and purity of whose character command the respect of all who know him. The Relators called him as a witness and examined him upon other points, but they did not ask him a question as to this resolution of reference. Yet he was at that annual meeting of 1868, and took a prominent part in its deliberations. Ah, Gentlemen, the Relators had some good reason for not examining him upon this point. This has been no accidental omission. He certainly would not have supported their eight witnesses, or they would not have failed to have propped up their weak and failing cause at this critical point by the tower of strength which his testimony, supported by his character, would have been to them. Yes, Gentlemen, the two men of highest character in the Relators' party do not support their eight witnesses upon this point.

Now, if the testimony to which I have already referred, were all that bears upon this point, you could not fail to adopt our view of it; for on our side the witnesses are twenty-five in number, and, adding Messrs. Guy and Gordon, twenty-seven, to the Relators' eight. But this is not all. We have on our side the corroborating evidence of the Relators' subsequent acts. The

annual meeting of 6th January, 1868, adjourned to meet on the 13th of January, for the purpose of hearing the report of the session and Board of Trustees on the list of voters. To that meeting of the 13th, called for that purpose and that purpose only, the Relators and Messrs. McMurray and Guy came. If, as they now say, the resolution of reference was not passed, why did they come to a meeting convened for the purpose of hearing the report of the Referees? At that meeting the Minutes of the previous meeting, containing the resolution of reference, were read. Did any one object that the resolution had not been passed? No. Mr. Young objected to another portion of the Minutes. But some of their witnesses say the Minutes were not adopted, and on this point some of our witnesses contradict them. But what matters it, whether they were adopted or not? The fact remains that the Minutes, including the resolution of reference, were read, and no one of these eight witnesses, who have since sworn that that resolution was not passed, then, when the matter was fresh in their recollections, objected to the Minutes on that ground. Another point; at that meeting Dr. McMurray moved to declare valid the election held at the previous meeting. If he had believed, as he now testifies, the Relators to have been then elected would he have moved to declare the election valid? Such a resolution necessarily implies that there was something defective which the action of the congregation was to validate. At this meeting, the session reported that, owing to the absence of their Moderator, they had not been able to conclude their scrutiny of the list. That report was read to the congregation, and yet no one, not even Dr. McMurray himself, then objected that the matter had never been referred to them. That Meeting adjourned, as some of the witnesses say, to come together again on 13th February for the purpose of hearing the report of the arbitrators. But whether it adjourned to that fixed date or not is immaterial, for, as we have shown you, on Sabbath, 8th February, notice was read that a congregational meeting would be held on 13th February for the purpose of hearing the report. On the evening of the 13th the meeting convened in obedience to that notice, and all the Relators and these eight witnesses came to hear the report of those arbitrators to whom they now say, the matter was not re-

ferred. The reports of the session and Board of Trustees were read. A motion was made to accept the reports. The chairman, Mr. Graham, declared it carried. Some one then moved to adjourn. The chairman declared that carried. Some of the Relators' witnesses say that the chairman erred in these decisions. All the witnesses concur in describing a scene of great disorder, a very Babel. Under such circumstances, who would be most likely to determine accurately the result of the votes, the chairman, whose faculties were all concentrated in the efforts to decide correctly, or the disappointed participants in the struggle? Remember also, upon this point, that the accuracy of Mr. Graham's decision is supported by many of our witnesses. Remember also who Mr. Graham is, and in what estimation the whole congregation held him.

But whether the reports were accepted or not is a matter of no moment. It is sufficient that they were read. Those reports were the decisions of the judges selected by the congregation and, therefore, not subject to its review, nor dependent for their validity upon its confirmation.

Now, gentlemen, considering the weight of testimony, twenty-seven witnesses on our side, eight for the Relators; and the testimony of our twenty-seven strengthened and made impregnable by the corroborating facts furnished by the Relators' acts to which I have referred you, can you, as reasonable men, doubt that that resolution of reference was passed?

The fact of the reference having thus been established let us next consider who the arbitrators were. My learned opponents have again and again told you that those arbitrators were candidates at the very election, upon whose validity they were to decide, and have endeavored to argue that the congregation could not be supposed to have intended to make judges of those who were directly interested in the matter in controversy. I shall crush this argument by showing the fallacy of the premises on which it is based. The resolution of reference appoints as arbitrators the Board of Trustees and the Session. The then Trustees had been elected in January, 1867, and were as follows: Messrs Graham, Johnston, James Stewart, Young, Ray, Kerr and Denison. Mr. Denison died in December, 1867, before the culmina-

tion of the troubles. Of the remaining six, two, Messrs. Stewart and Young, were candidates upon the Relators' ticket. It is not probable that they would be biased against the Relators. Messrs. Graham and Johnston had every reason to be unbiased, for they were candidates on both tickets as well as members of the old Board. In any event, therefore, they would remain in office.

The remaining two were candidates on the Defendants' ticket. Of the six Trustees, therefore, the Relators had two, the Defendants had two, and the remaining two were on both tickets. The session consisted of the following members: Dr. Wylie, Mr. Sterling, that venerable man who full of years and honor shortly after went to his rest; Messrs. Geo. H. Stuart, James P. Smyth, Ray, Chambers, Grant, Guy and McMurray. Only one member of Session, Mr. Ray, was a candidate at the election. You know in what estimation he was always held in this congregation. Several of the witnesses have characterized him as a very Nathaniel. You will recollect also that at the most turbulent period of the meeting of 6th January, 1868, when Mr. Sterling rose to speak, and so great was the disorder that that venerable man could not be heard, Mr. Ray alone succeeded in quieting the seething waves of party spirit. In so great respect was he held by everybody, that at his request the clamor ceased and Mr. Sterling was allowed to proceed. Yet this is the man who was too biased to be permitted to sit as an arbitrator in this matter, and who is now alleged to have been a participant in that mysterious conspiracy to take away the rights of this Congregation. You will notice also that the Relators were represented in Session by Messrs. Guy and McMurray, the leaders of their party. Summing up the list of arbitrators, out of the fourteen Trustees and members of Session, two were candidates for election on the Defendants' ticket, two on the Relators, two on both tickets and the remaining eight were not candidates at the election. So much for the constitution of the Arbitrators. How did they proceed to act in the performance of the duty imposed upon them? Did they act like men who were about to commit a fraud? Like men who had something to conceal? The Session met for this purpose on 9th and 29th January, 4th, 8th and 13th February, of all of which meetings Messrs. Guy and McMurray were notified, and at

all of which, except the first, they were present. The Session appointed, as a sub-Committee to examine the list, Messrs. Geo. H. Stuart, Grant, and Guy; thus, as you see, taking care to give the Relators a representative on that Committee.

Mr. Guy declined to act, assigning no reason for his refusal, and Mr. James P. Smyth, because of his well-known character for moderation, and because he was not a partisan of the Defendants, was selected in his place. The Board of Trustees met for the purpose of performing their duties as Arbitrators on the 29th January, and 8th and 13th February. We have proved that Messrs. E. Young and James Stewart were notified of each of these Meetings, but they did not choose to attend. The remaining members of the Board appointed as a Sub-Committee, to make a preliminary examination of the list of voters, Messrs. Ray and James Stewart, but Mr. Stewart declined to act, frankly assigning as a reason that his Counsel had advised him not to. Now, Gentlemen, I put it to you as candid men, does the procedure of the Arbitrators, which I have thus detailed to you, look like an attempt to commit a fraud, to carry out in secret the plan of a conspiracy against the other members of the congregation? If there had been any such purpose on their part would they have been so careful to give notice of all their meetings to Messrs. McMurray, Guy, Young and Stewart? Would they have appointed Mr. Guy on the Sessions' Sub-Committee, or Mr. James Stewart on the Trustees' Sub-Committee? Is it not clear that they were acting as honest men who had a duty to perform, and who were determined to do it, fearlessly and openly in the sight of God and men?

In the next place let me call your attention to the fact that the resolution of reference in express terms submitted to the Arbitrators the question of the validity of the election, and provided that "no certificates of election be given until it had been ascertained that no illegal votes had been cast," thereby necessarily implying that, if illegal votes had been cast, the election should be declared invalid. The Arbitrators concurred in finding that one hundred and twenty-seven illegal votes had been cast at the election, and so reported to the congregation.

I submit to your Honor, as matter of law, that the fact of

the referenee having been established, and it having also been proved that the Arbitrators acted in good faith in the performance of the duties imposed upon them, it must follow, that their report is final and conclusive upon the parties, whether they were right or wrong in so deciding. Upon this point I refer you to the cases of McManus vs. McCulloch, 6 Watts 360; Getty vs. Wilson, 7 P. F. Smith 269.

But were not the Arbitrators right in so deciding? The sixth article of the charter of this Congregation prescribes "that the persons capable of electing shall be all who are in full communion with the congregation, as well as all pew-holder, though not in full communion." We have shown you that by the unvarying usage of this congregation no pew-holder owns his pew, but is merely a tenant from quarter to quarter and that the Trustees are lessors of the pews, and as such have the right to determine the letting at the end of any quarter. We have also shown you the twelfth Article of the By-Laws of the Board of Trustees, which regulates their action, as such lesors.

"All persons neglecting to pay their pew rent, for two quarters "without giving satisfactory reasons for such neglect to the Indoor "Committee, shall be liable to the forfeiture of their right to "said pews." We have also proved to you that by the usage of this Congregation the term "full communion," as used in the sixth Article of the Charter, means not merely persons who are entitled to come to the Communion table, but persons so entitled who also contribute to the support of the Gospel by regular payment of pew rent. We have shown you further that every communicant upon being admitted to membership takes a solemn obligation to make such contributions, to the support of the Gospel. Such is the law by which the Arbitrators were bound. When, therefore, they found on the list of voters the names of certain persons who had been communicants, but who were not contributors to the support of the Gospel, in the way I have explained to you, could they say that such persons were members in "full communion?" On the contrary, were they not bound to say that such persons, not being members in "full communion" nor pew-holders, were not entitled to vote? Were they not bound, there-

fore, to strike the names of such persons from the list of voters? This explanation answers the attack upon the Arbitrators' Report, made by the thirty-six very respectable ladies and gentlemen who have sworn that they were communicants, or pew-holders at the time of the election of 1868 and, therefore, entitled to vote. Their testimony amounts only to this, which nobody doubted in their cases, that they believed and still believe themselves entitled to vote. But in opposition to this, you have the solemn finding to the contrary of the Arbitrators, the persons best qualified to decide this question, for they had in their custody the records by which alone the fact of membership or pew tenantcy could be proved. You will remember also, Gentlemen of the Jury, that but one of these thirty-six witnesses could swear positively that he had paid his pew rent within two quarters immediately preceding the election. But suppose that they had succeeded, as they have not succeeded, in proving that the Arbitrators were mistaken in the cases of these thirty-six, what becomes of the remaining ninety-one out of the one hundred and twenty-seven that the Arbitrators found not entitled to vote? Where are the ninety-one? Many of them never could be found, for they are strangers to this Congregation, people who had never been known as pew-holders, communicants, or attendants upon its religious services. How absurd is it, therefore, to talk of having successfully attacked the Arbitrators' Report, when they have been able to produce only thirty-six out of the one hundred and twenty-seven, and when they have not succeeded, in the cases of those thirty-six, in establishing anything more than the witnesses' belief in their right to vote?

But the Relators say, "this list has been kept back for three "years. We have not been able to learn the names it contains, "until it was read in evidence." To this we answer, Dr. McMurray and Mr. Guy were members of Session, and were present when the list was read. They heard every name. The Session in the Report state as their reason for not making the list public that they believe, that many of the persons whose names are upon it thought themselves entitled to vote, and that for the purpose of saving the feelings of those persons they would not publish it, but that they were ready to satisfy any legitimate inquiry. It

has also been proved to you that it was stated to the Congregation that any member, on application to the Session or Board of Trustees, would be informed whether his or her name were upon the list.

To show the impartiality with which the Arbitrators acted, we call your attention to the fact that Mr. George H. Stuart, and the other gentlemen who took the most active part in the examination of the list have testified that they did not in the case of any voter inquire for whom the vote had been cast. Furthermore it has been proved that two or three of the rejected voters had voted for the Defendants' ticket, and one of those, a gentleman who I am certain believed himself fully entitled to vote, was a nephew and partner in business of Mr. George H. Stuart.

Summing up then the evidence with regard to the election of 1868, it appears that the relators had a majority of the ballots cast, but that the question of the validity of the election was referred to the Session and Board of Trustees as Arbitrators, and that those Arbitrators after a full, fair and impartial examination decided the election to be invalid.

Before I pass the history of the election of 1868 there is one matter to which I desire briefly to call your attention. It has been charged that at the meeting of the Sixth of January, 1868, Mr. George H. Stuart introduced certain resolutions relating to the Rev. Dr. Wylie, and for the purpose of delaying the election, made a long speech in support of them. Those resolutions have been read to you. They recite, that during the past year various efforts have been made to undermine the influence of the pastor, and they express in the name of the Congregation reprobation of such unworthy attempts, and pledge the Congregation to the continued support of their pastor. You will remember that it has been proved that Dr. McMurray had so far forgotten himself, so far forgotten what was due to his position as an Elder, lifted up above the mass of the Congregation as an example to them, and as a guardian of its peace, as to employ his time and energies in the work of distributing among the Congregation a periodical, "The Reformed Presbyterian Advocate," which frequently contained attacks upon Dr. Wylie as a Minister and a man. Some of these attacks have been read in your hearing. You have heard from

them that Dr. Wylie is a hypocrite, that he has committed theft, that he has told lies. Yet it has been proved that Dr. McMurray was in the habit of directing the distribution in the pews of the church on Sabbath mornings, of copies of that periodical containing such charges against the pastor who was to conduct the religious services of their sanctuary, and whom, as an Elder, he was bound to uphold and assist. Is it to be wondered that when charges of so grave a character were being circulated among the Congregation, not by a stranger, not by a private member, but by an Elder, that Mr. Stuart, as a life-long friend of that pastor so cruelly maligned, and as an Elder, should have felt it to have been his duty to bring the matter to the attention of the congregation, in order that they might publicly condemn the slanders and the slander-mongers, and might testify their devotion to that pastor, who had devoted his whole life to their service and who had brought to it abilities and a strength and purity of character, which would have achieved for him eminence in any secular pursuit; that pastor who in health and in sickness had been ever with them, who for twenty-seven long years had gone in and out among them, who had stood by the bedside of their dying friends ever ready to say those words of hope and comfort which only a Minister of Christ can, and who when the shadows of sorrow and bereavement had fallen on their homes was always to be found in the midst of the mourners, consoling, encouraging and comforting them? And yet, Gentlemen, this congregation was to be told, and with Dr. McMurray's approval; that this man of pure and earnest life had done that which unfitted him for the society of gentlemen and which rendered him a proper inmate for a prison, and all his friends in the Congregation were to stand by and let the work of defamation go on, under penalty, if they brought the matter to the attention of the Congregation, of being told that they were conspiring to prevent an election. I tell you, Gentlemen, that if Mr. Stuart had not brought that matter to the attention of the Congregation he would have been recreant to his duty as an Elder, and he would have merited the condemnation of all, and they are numberless in this community, who respect Dr. Wylie's character.

The matter was brought to the attention of the Congregation. The resolutions were moved and seconded. Dr. McMurray very

naturally moved to lay them on the table, but his motion was negatived by a large majority. When the question was taken on the adoption of Mr. Stuart's motion, it was carried unanimously. No one of the Relators, not even Dr. McMurray himself, had the courage to vote against it, and thus go on the record as sustaining the charges of "The Advocate."

Yet we are to be gravely told that Mr. Stuart's resolutions and his speech in support of them, are all part of this mysterious conspiracy to deprive the Relators of their rights. It needs no argument to convince intelligent men of the absurdity of that. How weak, Gentlemen of the Jury, is that cause, which its advocates are compelled to bolster up with charges of conspiracy and fraud, alleged to have been committed by gentlemen of high character, and which charges are unsupported by proof and are utterly untrue!

So much for the election of 1868. The arbitrators voluntarily selected by the Congregation having decided the election to be invalid, who were to act as trustees for 1868 and as such to have the custody of the property of the Congregation? Very certainly not either of the parties claiming under the election of 1868, for the arbitrators had conclusively decided that election to be invalid, and it therefore could confer no rights on any one. Nothing was left therefore, but that the trustees for 1867 should hold over, until their successors were legally elected. If your Honor please, the trustees for 1867 were not only in point of law entitled, but were bound, to hold over. I refer you to Angell & Ames on Corporations, Pl. 143, p. 109; the Queen vs. Durham, 10 Mod. 146; Slee vs. Bloom, 5 Johns. Chanc. 378; and the unreported case of Ray vs. Young, one of the branches of this very litigation, in which Mr. Chief Justice Thompson sitting at Nisi Prius, upon the hearing of a motion for an injunction, held that these very trustees for 1867 were entitled to hold over, and enjoined the Relators from interfering with them in the exercise of their offices.

You will remember also, Gentlemen of the Jury, that two of the Relators, Messrs. E. Young and James Stewart, were members of the Board for 1867, and could have remained with the other members in possession of their offices, but they did not choose so to do, and that they thus deprived the Relators of their representation in the Board is certainly not the fault of the Defendants.

The Relators have dragged into this case many things which it would have been better for them and better for the cause of Christianity if they had left out. Several of the Relators have testified that at the meeting of 13 February, 1868, Mr. George H. Stuart shook his fist in Mr. Taylor's face and threatened to have him locked up in Moyamensing, if he had money enough to do it. We have proved to you by the testimony of Mr. Stuart himself and by many other witnesses that he never did that act nor said those words. The Relators' witnesses have also devoted much time to describing the occurrences at the meeting of Session at which as they allege Dr. Wylie threw certain papers in Mr. Young's face. You heard Mr. Young's testimony. He told you that Dr. Wylie threw two sheets of paper partly open from a distance of four feet; and that they struck him, Mr. Young, in the face with such force that if they had been a sword they would have cut off his head. Why, gentlemen, the thing is absurd. It carries its contradiction on its face. No man can throw two sheets of paper partly open four feet; the resistance of the air prevents that. Yet weak, feeble Mr. Young has not yet recovered from the blow. But even if all that the Relators say upon these points, were, as it is not, true, it would not have any bearing on the merits of the case; it would not help you in determining who were the trustees of this Corporation in January, 1870. Indeed, gentlemen, so much irrelevant matter of this sort has been brought in, so many unfounded charges of this character have been reiterated and commented upon by the learned Counsel for the Relators, that their course in this respect compels me to suppose that they are speaking from a brief similar to that with which the Barrister representing the plaintiff in an action in Ireland, is said to have been supplied, and which ran in this way:—"Plaintiff has no case. Abuse the Defendants."

I come in the next place to consider the action of the session of this Congregation in suspending Dr. McMurray and Mr. Guy from eldership. The relevancy of that matter to the issues in this case is this: the Charter requires that the trustees shall be recognized by the Session; Dr. McMurray and Mr. Guy constitute the session of the Relators' Congregation; if, as I shall show you, they were rightly suspended, and if that suspension has never been revoked,

the Relators have not been recognized by any session and consequently are not trustees. The facts of their suspension as they have been proved before you are these: they were charged before the Session with insubordination and certain other offences which it is unnecessary for me to discuss. A committee was appointed, in accordance with the ecclesiastical law of this denomination, to prepare a libel. Pending the proceeding the accused were suspended from office and membership under the authority of the following provision of the Book of Discipline (Chap. 4, Sec. 1, § 2). "In cases of public scandal, and in very flagrant cases of private "scandal, which cannot be speedily brought to trial, it is proper "to suspend the accused until the trial comes on and while it is "pending." They were, therefore, suspended in strict accordance with the law of the church. But the Relators say that the Synod of 1868 reversed the decree of suspension, and they refer to page 42 of the Minutes of that body, on which the decree of reversal is set forth. We admit that the Synod did make such a decree, but we answer that the Synod had no jurisdiction of the case, as no appeal had been taken, and that in no one of the papers presented to Synod was there any mention of the suspension of these gentlemen by name.

Mr. Justice Williams.—"Was there no paper presented to "Synod explaining the action of Session in suspending these gen- "tlemen?"

Mr. Patterson.—"No, sir. None at all. There was an alleged "copy of a declinature and appeal to Presbytery, but there was no "appeal from the act of suspension."

Mr. Price.—"The declinature took place before this proceed- "ing."

Mr. Justice Williams.—"This suspension was a precautionary "act."

Mr. Porter.—"There is nothing in the shape of an appeal re- "lating to this suspension. There never was an appeal or a sha- "dow of an appeal."

Mr. Price.—"The papers that were refused by Dr. McAuley "were the appeals."

Mr. Patterson.—"There is no evidence of that."

Mr. Price.—"On page 53, Minutes of Synod, 1868, if your "Honor please, you will find the protest and appeal."

Mr. Justice Williams.—"I do not see that they eomplain of the "suspension."

Mr. Price.—"It is mentioned in the remonstrance, page 49, but "no names are given. The Report of the Committee on Disci- "pline, page 42, fills in the names."

Mr. Justice Williams.—"The point Mr. Patterson makes is "that the Synod was not informed of the suspension by any paper "then before it."

Mr. Patterson.—"If your Honor please, the remonstranee merely mentions that two, among the oldest members of session, have been tyrannieally subjeeted to the unrighteous sentence of suspension, but the names are nowhere given. I say, therefore, with all eonfidenee, that any information the members of Synod had in regard to this suspension could only have been derived from conversations with Messrs. Guy and McMurray, or with other parties. But even if the remonstranee had recited the suspension with all partieularity, that would not have had the effect of vesting in the Synod any appellate jurisdiction in the matter, for the remonstrance is a mere petition, and is not one of the modes of appeal preseribed by the laws of the ehurch. The Book of Discipline, chap. 3, see. 3, § 4, preseribes that "no appeal shall be admitted unless notiee is given to the "judicatory, before which the ease is tried, at or before the defi- "nite sentence, and unless the appeal is delivered in writing within "two weeks after the party aggrieved shall receive notiee of the "sentence; unless such party be removed to sueh a distance, or "involved in such eireumstances as should render compliance with "this rule impossible." § 3. "Any one eoneerned in a trial, may "decline the authority of a judicatory, which undertakes to judge "of a case over which they have no cognizance or which aets any "way illegally, and, in such cases, a written declinature, specify- "ing the grounds of it, is to be laid before the judicatory; and a "copy shall be presented to the judicatory to whieh the referenee is made." Messrs. McMurray and Guy attempted to decline the authority of Session and appealed to the Presbytery. If they had proceeded in accordanee with the law which I have read to you they would have removed their eases to the Presbytery and thus prevented any further aetion on the part of the Session.

But they failed to furnish the Session with any eopy of their

appeal. The Session, therefore, never lost their hold on those cases and the Presbytery never acquired jurisdiction thereof. No appeal lies from the Session to the Synod, except through the Presbytery. If, therefore, Presbytery never acquired jurisdiction, the Synod could take none by appeal. But even if the cases had been regularly carried up to Presbytery, no appeal was taken from that body to Synod, for no paper of appeal was served upon the Presbytery. The Synod not having acquired jurisdiction by appeal, how could they reverse the action of the Session? Suppose that a plaintiff had obtained judgment in the Common Pleas of this County, and that the Defendant without taking any writ of error, or bringing up the record for review, were to make a verbal statement of his case to the Court of last resort, and that that Court were thereupon to make a decree reversing the lower Court and annulling its judgment, would any lawyer contend that that decree of reversal would be of any efficacy?

It follows, therefore, that Messrs. McMurray and Guy having been suspended from their Eldership in full accordance with the law of the church, and the sentences of suspension never having been legally revoked, they are not now Elders of the Reformed Presbyterian Church, and cannot constitute the session of any Congregation. It is to be noted also that the Book of Discipline Chap. 5, Sec. 2, prescribes a certain definite mode for the restoration of suspended church officers; even if the decree of suspension had been rightfully revoked, it would have been incumbent on them to show you that they had been restored to their office in the manner directed by the law of the church.

But you have noticed, throughout the whole of this case, that the eyes of the Relators and of their partisans in the Synod have been judicially blinded to such an extent, that they have seemed in all their proceedings to have deliberately set themselves to the work of trampling upon, and defying their own organic law.

The next point, Gentlemen, in the history of this case is the action which was taken by the Reformed Presbytery of Philadelphia, on the 14th May, 1868. On that day the Presbytery appointed, as a Commission, "to investigate the difficulties existing "in the First Church with a view if possible to restore peace and

"harmony," Rev. Dr. McAuley, Rev. Dr. Sterrett and Mr. Alexander Kerr. You will remember, that Mr. Kerr has been examined here as a witness for the Relators. No one will deny that he is, as he has been from the beginning of the difficulties in the church, an ardent sympathizer with, and strong adherent of the Relators' cause. For that very reason, the Presbytery appointed him a member of this Commission. They were desirous to give the Relators a representative on the Commission. In the same way, Gentlemen, as has been proved, the Session and Board of Trustees, were careful to appoint Messrs. Guy and Stewart, adherents of the Relators, on the respective sub-Committees who were charged with the duty of making the preliminary examination of the list of voters. In every instance where a body, the majority of which consisted of the Defendants' friends, had to appoint a committee to perform any duty of a judicial character, they were careful to give the Relators representatives on such Committees. Contrast that with the action of the Synod in 1868. Their Committee on Discipline, to whom were to be referred the papers relating to the difficulties in this Congregation, and who were expected to initiate the ecclesiastical war against the Defendants; their Synodical Commission, who were to be sent to this City to expel the Defendants and their friends from the Church they had built, and to establish the Relators' party in the exclusive possession of it, were both carefully packed with members whose action, as the Minutes of Synod attest, had left no doubt as to their partisanship with the Relators.

To return to the Presbyterial Commission. We have read you the Minutes of that body. We have shown you that they organized with great promptitude, and met on the 18th of May, 1868, to perform the duties imposed upon them. All the members including Mr. Kerr, were present. They had notified the parties in interest to appear before them. The members of the Board of Trustees for 1867, holding over, together with many of the prominent adherents of the Defendants' party, and Messrs. James Stewart and Biggerstaff, two of the Relators, appeared before the Commission. After hearing statements in relation to the pending difficulties from several of the parties, the Commission adjourned to meet at the call of the chairman. We have shown you also,

that further action on the part of that Commission was prevented by the action of the Synod of 1868 in the appointment of their Synodical Commission, by the proceedings of that Commission, and by the subsequent withdrawal of the Relators' party from the Congregation. But the importance to this case of that action of the Presbytery and its Commission, is this, that it shows that the Presbytery had acquired jurisdiction of the difficulties existing in this congregation, prior to the meeting of Synod in 1868, and as I shall show you presently, it necessarily follows therefrom that the Synod had no jurisdiction of those difficulties, and, therefore, could not confer jurisdiction upon the Synodical Commission, whose whole procedings are, for that reason, coram non judice, and, therefore, void.

Now we come to the meeting of the Synod, which convened in Pittsburgh 20th May, 1868. Before we consider these ecclesiastical proceedings, let me remind you that we have not brought them into this case. We contended and still contend that they are altogether irrelevant to the issues in this cause, and we, therefore, opposed their introduction; but the Relators have dragged them in here with the intention of fettering your hands, and restricting your action in this case and compelling the Court and you, Gentlemen, to do nothing more than to register the Synodical decree pronounced in defiance of the plainest principles of justice, and in violation of their own law, without hearing or trial, in a cause of which they had not jurisdiction. The Relators expect, Gentlemen, that you will blindly follow that decree, and that in so doing, you will deprive us of rights, for the preservation of which we have the guarantee of the Constitution, and the laws of this great Commonwealth.

The Relators and their party appealed to that Synod of 1868, by a very curious paper, which they call a "remonstrance," which gives, to characterize it mildly, a very inaccurate and mistaken statement of the difficulties in the congregation. Dr. McMurray has testified that that paper, was the result of the conjoined literary efforts of himself, and the Rev. Dr. Steele, the pastor of another Congregation in this denomination, and the Moderator of the very Synod, to which the "remonstrance" was presented. We have contradicted every material averment of that paper,

and we have produced before you many of the persons, whose names were affixed to it; most of them have testified, that they never saw the document, but that they were told, that it was desired to obtain the names of those who were in favor of the old Psalms, and opposed to the introduction of Hymns. Others of them have testified that they never authorized their names to be put to it, nor signed it. It is unfortunate for the Synod, that the only basis on which they can found their intervention in this matter, is a paper, many of the signatures to which, were obtained by false representations and most of the statements contained in which are untrue.

That Synod of 1868, did many curious acts. First; it reversed the suspension of Messrs. Guy and McMurray. I have already shown you that it had no jurisdiction of their cases and that its decree of reversal is a nullity. Secondly; it reversed the decision of the Session and Board of Trustees of this Congregation, in deciding, as Arbitrators, upon the invalidity of the election of 1868. Now it needs no argument to prove that the Synod had no jurisdiction to decide upon any appeal from the Board of Trustees, who are not an ecclesiastical body. The Synod might as well pretend to entertain an appeal from the decision of his Honor, Mr. Justice Williams, sitting at Nisi Prius. Nor is their case a whit stronger as regards the Session, for in the examination of the list of voters, the Session were acting, not in the exercise of their ecclesiastical jurisdiction, but as a tribunal pro hac vice, as Arbitrators, to whom, conjointly with the Trustees, and to which bodies alone, the Congregation had referred the matter. Let me illustrate this to your Honor. Certain acts of assembly have charged the Court of Common Pleas of this County with the duty of appointing certain public officers, such, for instance, as the Commissioners of Fairmount Park. Now suppose that, which is certainly not the case, the learned Judges of that Court had made an improper use of that power, and had appointed notoriously unfit persons, will any one say that their action in that case would have been subject to review upon appeal taken to the Supreme Court, which holds to the Common Pleas, precisely the relation in which, as the Relators contend, the Synod stands to the Session? Certainly not; and the reason is

that the Common Pleas in performing that duty are acting not by virtue of their ordinary jurisdiction but in pursuance of the special authority conferred upon them, and in the absence of any provision for an appeal from their action. Yet the Synod were so impressed with a belief in their own omnipotence that they actually undertook to reverse the action of these Arbitrators.

In the third place, the Synod, perhaps having been informed that the Relators had suffered from the effects of an injunction which had been granted against them, and being, therefore, fully persuaded of the efficacious nature of that remedy, gravely enjoined the Reformed Presbytery of Philadelphia and the Session of the First Church from exercising judicial functions in relation to the pending difficulties in the Congregation. Your Honor will find that there is absolutely no warrant in the law of the church for any exercise by the Synod or any other judicatory of this power of injunction.

In the fourth place, comes the action in the case of Mr. George H. Stuart. Our learned opponents, Gentlemen of the Jury, accuse us of dragging this matter into the case for the purpose of influencing your sympathies and perverting your judgment. I repel that charge. I am confident of the justice of the Defendants' case. I am confident that the facts and the law are on their side, and that they need to arouse no man's sympathies. You will remember, that the Relators rely, as an important part of their case, upon the action of the Presbytery in suspending its relations to the Synod. For the purpose of showing that, they attempted to give in evidence one of the series of resolutions which were adopted by Presbytery on 12th of June, 1868. We objected. We said, "We must have the whole record, or no part of it." Under that objection they were forced to give in evidence all the resolutions which the Presbytery adopted on that subject. Those resolutions recite, as one of the impelling causes of the suspension of relations the action of the Synod with regard to Mr. Stuart, and they characterize that action in the terms of indignant reprobation in which alone it can be truly described. I assure you, Gentlemen, it gave me great pleasure to hear that zealous advocate of the Synod, Mr. Price, read to you in his most convincing manner that clear and unanswerable condemnation of the Synod which the

Presbytery have put on record. But the Presbyterial record is not evidence of the facts asserted in it. It was, therefore, necessary for us to support that record by proving to you as a fact that the Synod had suspended Mr. Stuart from membership and eldership, and also for the purpose of explaining and justifyiug the action of the Presbytery, to show you the manner of and aggravating circumstances attending that persecution of Mr. Stuart. These reasons make it clear to you that this evidence is necessary to our case.

The facts in Mr. Stuart's case are briefly these. The Synod suspended him from office and membership, without hearing or trial, when he was absent and sick, and for the alleged commission of that which was for the first time authoritatively declared to be an infraction of the laws of the church.

Mr. Stuart was accused of a double crime; first, singing hymns, not in the religious services of his own church, but in the services of other Christian churches; and, secondly, in communing with other churches in sealing ordinances, which I understand to mean partaking of the Sacrament of the Holy Communion. I shall not take up your time with the argument of the question, whether or not these alleged crimes are forbidden by the proper construction of the law of the Reformed Presbyterian Church. I shall content myself with denying that they are so forbidden, and shall support my view of the matter, with the eminent authority of the Rev. Dr. McLeod, of New York, who has put upon the records of the Synod of 1868, over his own signature, his declaration, that "the paper adopted," in the case of Mr. Stuart, "gives to the standards of the Reformed Presbyterian Church, on the subject of Psalmody and ecclesiastical communion, an unduly restricted and impracticable construction." But even if Mr. Stuart had broken the laws of the church, he was entitled to be tried before being convicted. This is "the dog's right," for which the learned Attorney-General contended so eloquently in another aspect of this case. The law of the Reformed Presbyterian Church, as found in the second section of the third chapter of the Book of Discipline, is very clear upon this point. The mode of trial, the necessity for a distinct libel, specifying the time and place of the offense, the duty of giving sufficient notice to the accused, and of allowing

him sufficient time to prepare for trial, are all laid down there with the utmost clearness, evidently with the most anxious desire to guard the rights of the individual members and officers of the church, and to prevent the perpetration of such an act of gross injustice, as was done in Mr. Stuart's case. Yet in defiance of that law, which, as his Honor will tell you, was and is as binding on that synod as upon the humblest member of the church, the synod, without a libel, without a distinct statement of the charge, by a mere legislative resolution, upon which the vote was taken, when Mr. Stuart was absent, when, as every member of synod knew, he was too ill to be present, undertook to cast him forth as unworthy to hold communion with the enlightened Christians who constituted the synod.

But, gentlemen, even if the synod had tried him in accordance with their own law, the sentence of suspension would have been void, for they had no jurisdiction of the case. The Book of Discipline prescribes (Chap. 3, sec. 2); the Presbytery in the case of ministers and the session in every other case, as the competent court, and vests original jurisdiction in the superior judicatory only when the inferior judicatories are remiss in the exercise of discipline, or otherwise incapable of applying a remedy to an open scandal. The session was therefore the proper Court to try Mr. Stuart, and the synod had no jurisdiction.

Now, the great importance of that action to this case is this; if the Synod could be permitted to suspend from office or from membership a member of the church, and that without hearing or trial, and for an alleged offence not forbidden by the law of the church, it necessarily follows that the rights of the whole membership were at the mercy of the Synod, for if they might suspend one man, they might suspend another or ten or twenty more. In other words, that single act revolutionized the whole system of their church government. It converted the Reformed Presbyterian Church from a republic, in which the rights of all the members were safely guarded by the organic law of the body, into an absolute despotism under whose iron rule no member, Session, or Presbytery, had any rights which the Synod were bound to respect. Will you tell me, therefore, that this Presbytery and this Congregation were to bow in meek submission to this

tyrannical usurpation on the part of the Synod? Will you not rather tell me, that the Presbytery were bound by their duty to the Congregations which they represented, and by their paramount obedience to the law of their church, to take such action as would effectually protect the rights of the individual members of the church and teach this usurping Synod the limits of its power?

But this was not the only act of usurpation committed by that Synod. They appointed a Commission, to whom they referred the whole matter pertaining to the difficulties then existing in this Congregation, whom they clothed with synodical powers, authorized to issue the whole case, and directed to meet in the church on a certain day designated. But the Synod had no jurisdiction of those existing difficulties, and, therefore, could confer none upon their Commission. They had not original jurisdiction, for, as I have already shown you, their own law gives them such jurisdiction only in case of "remissness" on the part of the lower judicatories. But the jurisdiction of the Reformed Presbytery of Philadelphia had already attached. There had been no "remissness" on their part, for, as has been proved, that body had, within two days after the matter had been brought to their attention, appointed a Commission, who, four days afterwards, entered upon the judicial investigation of the matter. Nor had the Synod appellate jurisdiction. No appeal was taken from the action of the Presbytery. It is idle to say that that "remonstrance" vested in the Synod any jurisdiction which the laws of their church did not confer upon them. As well might it be said, that the Congress of the United States could find a warrant for its enactment of an unconstitutional law in the fact that certain citizens had petitioned them to pass such an act. I do not impugn the right of petition. I admit that the few persons who signed the remonstrance in good faith had an undoubted right to petition the Synod. But I do contend that no such petition could authorize the Synod to do that which they could not have done in the absence of any petition. The appointment of the synodical Commission was therefore a nullity.

The Synod adjourned on the 29th May. On the 12th June following, the Reformed Presbytery of Philadelphia met, and adopted that action, which the Relators have falsely stigmatized as

a secession from the Church, and upon the perversion of which they build all their hopes in this case. That action has been read to you. You have remarked the calm, dignified, almost judicial tone of the Presbyterial Resolutions. You have observed, that, so far from pronouncing an act of secession, the Presbytery, on the contrary, expressed a firm determination "*to remain* in the Reformed Presbyterian Church, maintaining her organization, and endeavoring to develop and apply her principles in their proper application to the age and country in which we live."

On the 17th of June, 1868, the Synodical Commission met in this City. Our learned opponents have endeavored to make some capital out of the refusal of the Trustees in possession, to permit the Commission to meet in the Church. They had very sound reasons for that refusal. Firstly, the Commission was, as I have shown you, illegally appointed. No man, therefore, was bound to recognize it or obey its pretended authority. Secondly, the Trustees in possession, had had, by that time, good cause to dread the lawless and turbulent disposition of the Relators and their clerical partisans. They apprehended, and with much reason, that if that Commission were once permitted to sit in the Church building, they would not leave it, until they had, in defiance of law and justice, established the Rélators in the possession of the building. Ah, gentlemen, the Trustees in possession knew too much to trust that Commission.

The Commission, failing to get into the First Church, met in the more congenial atmosphere of Dr. Steele's church. What did they do? They certainly did not pursue the Synodical grant of authority. They did not confine themselves to the consideration of the difficulties existing in the First Church, the matter over which alone, the Synod had given them jurisdiction. They were informed of the action of the Presbytery in suspending relations, and the knowledge of that fact had on those venerable clergymen and elders, very much the influence which a red flag, when flaunted before his eyes, exercises upon a bull. It infuriated them. They then proceeded to do what?

To punish the members of Presbytery, who had taken the obnoxious action, and over whom as ecclesiastical officers, they

might have had some slim pretence of jurisdiction? No. They proceeded to punish the innocent corporators of the First Church adhering to the Defendants, who had known nothing of the Presbyterial action until after it had been adopted, and who, if they had known of it, had no power to prevent it. And how did they attempt to punish them? By doing that which no body of Ecclesiastics, no Synod, nor General Assembly will ever, in this country, at least, be permitted to do—by taking away from them their property, their franchises, as members of this Corporation, their interest in this valuable church which has been built mainly with their money. And more than all, this Commission had cited before them, as is proven by their own records, only seven of the four hundred Corporators, whose property they attempted to confiscate. They had thus committed a great crime, which no Court of justice will tolerate, and no Judge, sitting to administer the laws of this land, will ever condone.

On or about the 1st July, 1868, the Relators and their adherents, in number about two hundred and eighty persons, disregarding, I am very certain, the sound advice which they must have received from their able and learned counsel, and following the blind guides to whose leading the Synod had committed them, voluntarily seceded from the Corporation in possession of the Church. From that day to this the Relators have had a separate and independent congregational organization. They have held their stated religious services and their Congregational Meetings first in the Old, and afterwards in the New Horticultural Hall, where, I trust, they will remain until they build a Church of their own. They have also called and settled a Pastor, the Rev. A. Gifford Wylie, altogether overlooking the fact that the Rev. Dr. T. W. J. Wylie is, as he has been for seventeen years past, the sole pastor of the Congregation of which the Relators claim to be the Trustees, and of which their electors allege themselves to be the constituent members. In that secession the Relators' party made the same mistake that the Southern States made in 1861, and this miniature secession has been followed by consequences very similar in character.

My learned friends, the Counsel for the Relators, will readily concede, that up to the time of that secession there was a fully

organized Corporation, possessing all the attributes of corporate life in possession of the Church-building. They will also admit that the Relators carried off with them a minority of the Corporation, and that they left the majority in possession. The figures are fixed by the testimony, as follows: about two hundred and forty seceding with the Relators and about four hundred and thirty remaining with the Defendants. The evidence also is clear and conclusive that that secession was voluntary. They withdrew of their own motion, and the doors have ever since been open to them to return.

Now, if your Honor please, what is the effect, in point of law, upon the Relators' rights in this case, of their voluntary withdrawal and abandonment of the Corporation? The Corporation certainly received a severe blow when it was deprived of Dr. McMurray and the Relators in this case; but did it die?

(The hour of three o'clock having arrived, the Court adjourned for the day.)

Tuesday, *April* 4, 1871.

After the opening of the Court, Mr. Patterson, in continuing the argument for the defendants, said:

"May it please your Honor, gentlemen of the jury:—At the adjournment of the Court yesterday, I was engaged in discussing the effect of the withdrawal of the relators' party from the congregation in July, 1868. I had called your attention to the fact, which is uncontradicted, that that withdrawal was voluntary, and that from that time to the present day, the relators have been excluded from the church only by their own action. You will remember, also, that we have proved to you, by the testimony of Dr. Wylie, that since that time the relators have not been members in ecclesiastical communion with the congregation; and, by the testimony of Mr. Johnston, who has kept the pew-books, that since that time they have not been pew-holders; their pews, after their voluntary abandonment of them, having been

rented to and occupied by others. We have also shown you that the relators have since then made no claim to the possession of those pews, nor have they attempted to exercise the privileges of communicants in the congregation.

Now, if your Honor please, what, in point of law, is the effect of all this? It is clear, as I stated to you yesterday, that, up to the time of the relators' withdrawal, there was a fully organized corporation in possession of the church building. After that withdrawal did the corporation die? I submit that it did not; but that, on the contrary, it continued in the full enjoyment of corporate life. On this point I beg to refer you to Angell and Ames on Corporations, pl. 194, p. 163; Baker *vs.* Fales, 16 Mass. 488. In this last case, the facts were that a minority of a congregation in Dedham seceded, as the relators have done in this case, and the deacons elected by them brought replevin against the deacons elected by the congregation in possession, to recover the communion service of plate. The Court held that the plaintiffs could not recover; for, by their voluntary withdrawal, they had forfeited their rights as corporators. If that case correctly enunciates the law, and that it does so I am confident, it is fatal to the relators' recovery in this case.

Let me put this in the form of a logical dilemma. Either the relators are members of the corporation or they are not. If they are not, they are strangers to the corporation, and cannot maintain quo warranto. *Wilcock On Corporations*, pl. 412; Rex *vs.* Grant, 11 Mod. 299; Rex *vs.* Stacey, 1 I. R. 3; Commwth. *vs.* Cluley, 6 P. F. Sm. 270. If they are members of the corporation, they are bound by the defendants' election, which was held, after due notice, in the place directed by the charter, and at which place only their partisans should have offered their votes, if they desired to elect the relators.

If your Honor please, the facts with regard to the elections of 1869 and 1870 are not in dispute. The relators' party were, during those two years, worshipping in the New Horticultural Hall, but they held their annual corporate elections in the Old Horticultural Hall. The defendants held their elections in the church. The charter which the relators have set out in full in their suggestion, and upon which they profess to rely, gives very

clear and explicit directions as to the corporate elections. It provides,

1st. That two week's previous notice of the election shall be given from the pulpit, which, of course, means the pulpit in the church.

2d. The election shall be by ballot, *in the church.*

3d. That the persons capable of electing shall be all who are in full communion with the congregation, as well as all pew-holders, though not in full communion.

4th. That the Trustees elect shall be recognized by the Session of this congregation as being in full communion with this church.

"Such is the organic law of this congregation, by which, as a test, your Honor is to decide whether the Relators or the Defendants are the lawfully elected Trustees of this congregation for the year 1870. I say for the year 1870 only, for the titles of the Trustees for the year 1869, are not put in issue by the pleadings in this cause. It is true that the Relators brought this action in October, 1869, to try the titles of the Trustees for that year, but subsequently against our protest, they struck out the names of some of the Defendants, substituting others for them, and so amended the records as to put in issue the titles of the Trustees for 1870. I put it to your Honor, are you going to adjudicate upon the rights of those Trustees for 1869, whose names have been stricken from the records and who are not parties to this proceeding? Are you going to try their titles in their absence? I am sure that you will not, and that you will therefore disregard everything that relates to the elections of 1868 and 1869, and that you will try only the issues raised by the pleadings, which relate solely to the election of 1870, and to the right of the Relators to maintain this action.

"If the elections of 1870, at which the Relators and Defendants were respectively chosen, be tested by the charter provisions to which I have referred your Honor, you will find that while the Defendants' election was in full conformity with the requirements of their organic law, the Relators' election was defective, in that,

1st. The charter notice was not given.

2d. The election was not held in the place prescribed by the charter.

3d. The Relators' electors were not and are not members in full communion with this congregation nor pew-holders.

4th. The Relators have not been and are not recognized by the Session of this congregation as being in full communion with this church.

I shall not waste your Honor's time in discussing these defects. Any one of them would be fatal to the Relators' titles as Trustees and, therefore, to their right to recover in this action. Our learned opponents have attempted by ridicule to weaken the force of these objections. They have asked whether, if the church building were burnt to the ground we would consider it necessary to the validity of the corporate election that it should be held amid the burning embers. I answer, no; the law does not compel the performance of an impossibility. When your church has been destroyed, you cannot hold an election in it. But I say, and I say it with all confidence, that where the question for determination is, whether an election held in the church, or an election held elsewhere, be the annual corporate election, then that election held in the place prescribed by the charter must be conclusively presumed to be the corporate election.

They have also alleged that Messrs. Guy and McMurray alone constitute the Session of this congregation, and they have denied the validity of the titles of the Pastor and Elders who have remained with the congregation in possession. They do not, however, deny that prior to the Relators' secession in July, 1868, the session of this Congregation consisted of the following members, Rev. Dr. Wylie, Moderator, Messrs. George H. Stuart, Grant, Smyth, Chambers, Ray, McMurray and Guy. If they were to deny this, I should prove that those gentlemen were at that time members of session by producing that which would be satisfactory evidence to the Relators, if to no one else; namely, the decree of the Synod of 1868, (Minutes, 1868, p. 42), naming those gentlemen as members of session, enjoining them from the exercise of judicial powers, and therefore by implication admitting them to be in the full enjoyment of all their other official functions. Your Honor will search in vain through all the records of the Synod from that day to the present time, and through all the voluminous evidence in this cause for anything tending to show that any one of those gentlemen (except Messrs.

Guy and McMurray) has been legally deposed from his office. You will notice also that the Synodical action to which I have referred you was taken after the Synod had adopted the resolution suspending Mr. Stuart from office and membership. They were so ashamed of that proceeding and so conscious of its invalidity that on the very next day after they had declared him suspended, they, by issuing their injunction against him in common with the other members of session, admitted him to be still an Elder and member of session, non-obstante their decree of suspension. Taking the case as regards the session most favorably to the Relators, it appears that they had with them two members of session, Messrs. Guy and McMurray, while the other six members remained with the Defendants in possession. It is clear, therefore, too clear for argument that the minority who seceded from session, even if they were elders in good standing, cannot be held to constitute that body, which is known as the session. A majority, the six who remained, are in the eye of the law, the session of this Congregation. But as we have already shown your Honor, Messrs. Guy and McMurray are no longer elders in this Congregation and cannot be constituent members of its session. They were regularly suspended from office in May, 1868, and that decree of suspension has never been reversed.

Nor is there any evidence in this cause to show that the Relators were elected by electors duly qualified according to the charter; that is, by pew-holders or members in full communion. Your Honor will remember that we called upon them to produce their list of voters at the election of 1870, but they have never produced it. The only evidence they have been able to produce upon this point is to be found in the testimony of Mr. Hazel, who testified that he was present when the Relators were elected, and that he looked at the voters as they came up to vote, and he is satisfied that they were all qualified. Yet Mr. Hazel is not an elder nor has he ever been a Trustee. He has no peculiar means of knowing who are members or pew-holders. Several of the Relators have also sworn that they voted at that election, but, as we have already shown you, those gentlemen were not qualified to vote, for in July, 1868, they had voluntarily ceased to be members of the Corporation. I submit to you, therefore, that the Re-

lators have failed to show that they received, on the first Monday of January, 1870, the vote of any one qualified elector of this Corporation.

Contrast all this with the proof in regard to the election under which the Defendants claim. We have shown you, by evidence, which is uncontradicted, that notice of the Defendants' election was given two weeks previous from the pulpit in the Church, that the election was held by ballot in the Church; that the Defendants were chosen at that election by the votes of pew-holders and members in full communion. We have also given you the name of every person who voted at that election, and we have shown you by the testimony of Dr. Wylie, who has for 17 years kept the records of the Session, and by the testimony of Mr. Johnston, who has for 8 years kept the pew-book, that each one of those voters was, at the date of the election, either a pew-holder or a member in full communion. We have also shown you that each one of the Defendants has been recognized by this Session as being in full communion with this Church. We have further proved with similar particularity, that Mr. George H. Stuart, Jr., was on 2d March, 1870, elected to fill a vacancy.

Your Honor has before you, therefore, the case not of two sets of corporate officers claiming under one and the same election, but of two sets of officers, one set, the Defendants, claiming under an election held in strict conformity with the charter, and the other set, the Relators, claiming under a different election distinguished by the flagrant violation of every material requirement of that charter by which they profess to be bound. If the evidence had stopped at this point Your Honor would not have had much cause for hesitation. The law would have compelled you to hold that the Relators had not made out a case to go to the Jury; but, for the purpose of meeting this exigency, the Relators have introduced the action taken by the Philadelphia Presbytery on 12th June, 1868, and the subsequent proceedings of the Synodical Commission and the Synod of 1869. That evidence is intended to impress Your Honor and to impress the Jury with the belief that the Defendants and their electors have violated the trusts upon which they hold their corporate franchises and that, there-

fore, they no longer, in the eye of the law, constitute the corporation of which they claim to be members; but that the Relators and their adherents, as faithful upholders and performers of those trusts, constitute the corporation. Before I proceed to consider the trusts which are raised by the charter, and to satisfy your Honor that the Defendants have not violated them, I desire to remind your Honor that you are sitting as the Judge of a Court constituted to administer the Common Law, and that you are now engaged in trying that most technical of all common law actions, the action of Quo Warranto. I submit to you, therefore, that the Relators have mistaken their remedy and should have sought relief in a Court of Equity. But as I do not desire to argue this case upon technicalities, I prefer to waive that point, and to argue this branch of the case, as if your Honor was sitting as a Chancellor. Now, if your Honor please, what are the trusts upon which the members of this Corporation hold their franchises? We have been told again and again during the progress of this trial that this charter vests the corporate franchises only in those who are in subordination to the Synod; and that it subjects the Corporators to the absolute and irresponsible authority of that body. It has been put to you again and again with all the eloquence and all the ingenuity of the Relators' Counsel that the charter binds the Corporators hand and foot to the Synod; but there is not one word in the charter that will bear such a construction. The only portion of the charter which has any reference to this subject is the second article, and that declares the Corporators to be those "*who adhere to and maintain the system of religious principles declared and exhibited by the Reformed Presbyterian Synod of North America.*" In other words, the charter subjects us to principles, not to men: to doctrines, not to doctors.

Such being the only clause in the Charter which can be tortured into any resemblance to a trust, what act of the Defendants do the Relators allege as a breach of that trust? Which one of the Religious Principles declared and exhibited by the Reformed Presbyterian Synod of North America do the Relators charge the Defendants with having violated? Their whole case rests upon the alleged act of secession committed by the Reformed Presbytery of Philadelphia on the 12th June, 1868. The resolutions then adopted by the Presbytery have been read in

your Honor's hearing. You have observed that so far from expressing any intention to secede, the Presbytery, after reciting the irregular and unauthorized action of the Synod of 1868 (upon which I have already commented at length) adopted the following declaration :—"We do therefore hereby suspend our relations to said Synod until such action be revoked, or until we obtain further light, and in the meantime we REMAIN in the Reformed Presbyterian Church, maintaining her organization and endeavoring to develop and apply her principles in their proper application to the age and country in which we live, trusting that ere long those who have disregarded her constitution and her laws, and have perverted her order and her discipline, will rescind their illegal acts and concur with us in the views we have thus announced." It is worse than idle to argue that that is secession. Men who intend to secede from a body do not usually inform the world that they remain with it. Contrast the action of this Presbytery with the origin of the Secession Church in Scotland. In the year 1733 certain ministers of the Church of Scotland seceded therefrom, and organized that body which to this day bears the name of the Secession Church. They then signed a document which is to be found on page 64 of M'Kerrow's History of the Secession Church, in which, after reciting their grievances, they say :—

"Therefore we do, for these and many other weighty reasons, to be laid open in due time, protest, that we are obliged to make a SECESSION from them, and that we can have no ministerial communion with them, till they see their sins and mistakes, and amend them. And, in like manner, we do protest, that it shall be lawful and warrantable for us to exercise the keys of Doctrine, Discipline, and Government according to the Word of God and Confession of Faith, and the principles and constitutions of the Church of Scotland, as if no such censure had been passed upon us."

There, if your Honor please, the would-be seceders not only expressed in so many words their intention to secede, but also asserted their right to maintain a separate ecclesiastical government. In our case Presbytery declined to continue their organic connection with the Synod until the Synod rescinded certain illegal acts; but asserted their intention to remain in the Church.

Nor were the Presbytery without a precedent for their action. In the year 1706 the Reformed Presbyterians of Scotland being without a regular ministry, the Rev. John M'Millan acceded to them from the Judicatories of the Established Church, who promptly followed this act on his part with a sentence of deposition from the ministry. The Reformed Presbyterian Church sustained him in his course and approved his rebellion against the ecclesiastical authorities, to whom, according to the Relators' doctrines, he should have bowed in submission (Reformation Principles, Hist. part, p. 103). I find also that Renwick, the martyr Renwick, whose authority ought to have great weight with the Relators' clerical allies, inculcates in his "Informatory Vindication," p. 229, the duty of separating from "the backsliding part of a church after they have become obstinate in the declinings of former sound principles and practices." I find also that it is declared in the Reformation Principles (Doctrinal part, p. 68), that "when the administration (of the Church) is corrupt, and attempts at its reformation have proved ineffectual, it is the duty of Christians to separate from it; and if the majority should violate the terms, upon which Church-members were united, it is lawful for the minority to testify against the defection, and to walk by the rule of their former attainments." In the light of these authorities, and remembering how utterly unauthorized and how subversive of the rights of all the individual members of the Church, the acts of that Synod of 1868 were, will any one say that the Presbytery committed any breach of the laws of the Church in suspending relations with that Synod? But, suppose for the sake of argument, that the action of the Presbytery was ultra vires; and suppose also that the Defendants and their adherents participated in that action, how is the Relators' case strengthened thereby? The charter, as I have already shown you, does not require the Corporators to be in organic connection with the Synod, but it does require them to adhere to and maintain the system of religious principles which the Synod held in 1816. I, therefore, submit to your Honor that before the Relators can successfully contend that the Defendants' ratification of the Presbyterial suspension of relations is a breach of the trust upon which they hold their corporate franchises, they must convince you that such

action upon the part of the Defendants is distinctly forbidden by the system of religious principles declared and exhibited by the Synod of 1816. This they have failed to do; and so far from there being any such proof in the cause, we have shown you, on the contrary, that the Presbytery, in suspending relations, did not only that which the law of their Church permitted them to do, but also that which, in obedience to the instructions of the fathers of the Church and their own published doctrines, they were bound to do.

Nor is there in the voluminous mass of testimony in this cause, a scintilla of evidence, tending to show that the Defendants or their partisans have, in the most minute particular, departed from the faith of their Fathers. No witness has had the hardihood to say that. Much has been insinuated as to loose views held by some of the Defendants on the subject of Psalmody. "Psalms *vs.* Hymns" was, as your Honor will remember, the party cry of the Relators in 1868. The charge that the Defendants intended to abandon the ancient Psalmody was the pretext for obtaining signatures to the "Remonstrance." Yet no one has been found to testify that a hymn has ever been sung in the religious services of this congregation, nor is there any proof that any one of the Defendants or their partisans intended to sing a hymn in those services.

It is therefore an uncontradicted fact in this cause, clear beyond the possibility of controversy, that the Defendants have not violated the trusts upon which they hold their franchises. The law applicable to this state of facts is equally clear. I shall, therefore, detain your Honor but a few moments in the statement of it. The leading case upon this subject is Craigdallie *vs.* Aikman, 1 Dow., P. C. I. Prior to the decision of that case in 1813, there had been much uncertainty in the law as to the ratio decidendi in controversies between dissentient portions of religious bodies. The Scottish Courts were at one time inclined to adopt the very simple rule of holding the numerical majority of the particular congregation to be fully clothed with power to control the disposition of property held in trust for the congregation; at another time, they held that the majority, in point of interest, of the congregational contributors were to

be regarded as entitled to the exercise of that control; at still another time, they held the power to be vested in that portion of the congregation, which continued in connection with the Supreme Ecclesiastical judicatory of the denomination, with which the congregation had originally been in connection. For a very full and lucid history of the Scotch and English Law upon this subject, I beg leave to refer your Honor to one of the most scholarly and philosophical legal treatises it has ever been my good fortune to examine, the work of Mr. Alexander Taylor Innes, of Glasgow, upon the "Law of Creeds in Scotland." When the Craigdallic case first came before the House of Lords, Lord Eldon brushed away the conflicting rules enunciated by the Scotch Courts and laid down a principle, so eminently logical and equitable, that it has been followed in all the English and Pennsylvania cases from that time to the present day. That principle is this: that where there is a controversy between two parties in a congregation as to the right to the exclusive use of the congregational property, the Court will inquire, as matter of fact, what were the doctrines for the support and inculcation of which the property in question was originally acquired by the congregation, and will then decree that those who maintain those doctrines are entitled to the exclusive benefit of the trust. Your Honor is familiar with the English and Irish cases in which this doctrine has been followed: Attorney General *vs.* Pearson, 3 Merivale 353; Lady Hewlett's Charities, 7 Sim.; Shore *vs.* Wilson, 9 Clark and Fin. 355; Dill *vs.* Watson, 2 Jones Irish Exchequer 48; and I need not consume your time in commenting upon them. There are however two Pennsylvania cases to which I desire particularly to draw your attention. In Presbyterian Congregation *vs.* Johnston, 1 W. & S. 9, decided in 1841, the question was whether, after the separation of the Presbyterian Church into the Old and New School bodies, the majority of the congregation had, by adhering to the New School Assembly, forfeited their title to property which had been conveyed in trust for a society of English Presbyterians. In that case, as in this, there was no doctrinal variance, and the only breach of trust alleged was in the severance of congregational connection with the Old School Assembly. The Court held, Mr. Chief Justice Gibson delivering

the opinion, that the trust required the maintenance of the doctrines of the Presbyterian faith but did not require an organic connection with that particular assembly, and that, therefore, the adherence of the congregation to the New School Assembly did not work a forfeiture of their right to claim under the trust. That case is followed and supported by the Lutheran Church case, 12 Wr. 20, in which the question was, whether a Lutheran congregration, which had withdrawn from the Alleghany Synod and had connected itself with the Missouri Synod of the same body, had thereby forfeited its right to property, which had been vested in the congregation described as of the Lutheran faith but not mentioned as in organic connection with any judicatory of that denomination. This Court held that there had been no forfeiture; and the present Chief Justice, in delivering the opinion, comments upon the absence from that case of all proof of doctrinal variance and holds that unless it were shown that the severance of the congregation's Synodical connection is a breach of the trusts specifically set forth in their title deeds, or a violation of some doctrine of the Lutheran faith, no forfeiture of property could result therefrom.

It is difficult to distinguish those cases from the one at bar. The charter of this corporation does not require it to be in organic connection with the Synod; nor is it, as I have shown you, one of the system of religious principles declared and exhibited by the Reformed Presbyterian Synod of North America, that the members of this Reformed Presbyterian Church should blindly follow and tamely submit to anything which the Synod may please to do in flagrant violation of the laws of the Church and of the terms upon which its members are united.

I say, therefore, with all confidence, that under the law of Pennsylvania, as laid down in the cases to which I have referred, the Defendants have not, by their alleged ratification of the Presbyterial suspension of relations, forfeited their corporate franchises.

But the learned counsel for the Relators have cited certain cases, as tending to maintain the contrary of this proposition, and I shall endeavor, in a few words, to show you that these cases do not militate against those views of the law which I am here to maintain.

Their first case is Commonwealth *vs.* Green, 4 Wh. 531; the great Presbyterian Church case, in which, after the disruption in 1837, this Court held that the Old School Assembly was, by reason of its regularity of organization, in continuity of succession to the General Assembly of the Church, as it had been before the disruption; but in that case nothing was decided, as to any congregational trusts. This is made very clear by Mr. Chief Justice Gibson's comments upon this case in his opinion in *Congregation vs. Johnston*, 1 *W. & S.* 38, to which I have already referred. In *Skilton vs. Webster*, *Bright.* 203; *Winebrenner vs. Colder*, 7 *Wr.* 244; *Den vs. Bolton*, 7 *Halst.* 214; *and Miller vs. Schnorr*, (decided by this Court a few months ago); there was, in each case, a clear and unmistakable breach of the trust upon which the particular congregation held the property or franchises in question. No one of those cases impugns the validity of the rule of law, which I contend to be applicable to this case. Indeed they all expressly or impliedly admit it, for each turns upon facts which constitute it an exception to the rule. I submit, therefore, that upon a careful examination of these cases, your Honor will find nothing which in any way impairs the force of the authorities upon which the Defendants rely.

But the Relators have still another resource. They produce, with an air of great triumph, that very remarkable decree promulgated by the Synodical Commission, in June, 1868, and confirmed by the Synod of 1869, in the following words:

"*Resolved*, That Dr. A. S. McMurray and Robert Guy, ruling "elders, with the officers and members whose names appear on the "various papers submitted to Synod at its late meeting, and by "Synod referred to this Commission, together with such others "as may adhere to them, be and they hereby are declared to be "the First Reformed Presbyterian Congregation of Philadelphia, "and as such entitled to all the rights and immunities appertaining "thereto, and by this Commission, in the exercise of the power "entrusted to it by Synod, are hereby placed under the care of "the Second Reformed Presbytery of Philadelphia."

The learned counsel for the Relators profess to rely upon that decree as decisive of this controversy, because judicially determining the Relators' electors to be the constituent members of the corporation.

But I will undertake to satisfy your Honor that neither the Commission nor the Synod had any jurisdiction of the subject matter of this decree; that, therefore, the decree is a nullity; and that even if they had had jurisdiction, the defects in their procedure are fatal to the validity of their decree. I ask, therefore, in the first place, what are the limits of the Synod's Jurisdiction? But just here I am met by an objection from my learned opponents, who argue in effect, that the Synod alone can determine what is technically known as the jurisdictional fact; or in other words, that when this Synod or any other ecclesiastical body has acted in a matter of which they claim to have jurisdiction, that then all civil tribunals must not only refuse to disturb that ecclesiastical decree, but must give to it the conclusive effect they would give to the judgment of a civil Court of record; more than that they must resolutely shut their eyes to palpable defects in the ecclesiastical proceedings, defects so subversive of right and justice that they would render nugatory the judgment of any civil court. I say with all respect to the learned counsel that such an argument is a gross absurdity. Let me illustrate this by putting a case to your Honor. Suppose that this Synod at its next meeting were to enter a decree that Mr. Justice Williams be deposed from his seat upon the bench and degraded from his high office; would your Honor, or your Honor's colleagues on the bench obey that decree? Or suppose that that Synod were to enter another decree, confiscating all the property, real and personal, of the twelve jurymen in this cause; would any court in Christendom enforce that decree? And why not? For this, among many other reasons, that in those decrees the Synod would attempt to determine questions of civil right over which they cannot have jurisdiction.

If the Synod can exercise this vague and undefinable power, why was the "Book of Discipline" ever adopted by the Church? It is absurd to enact laws to control an omnipotent body. Why was the Synod's jurisdiction, original and appellate, so carefully distinguished and defined therein, if it be an established doctrine that the Synod can conclusively determine whether any subject or any person is, or is not, within its jurisdiction? The 31st chapter of the "Westminster Confession" does not seem to support the Relators' view of the functions and powers of Synods, for it is there laid down as follows:—

IV. "All synods or councils since the apostles' times, whether general or particular, may err, and many have erred; therefore, they are not to be made the rule of faith or practice, but to be used as a help in both."

V. "Synods and councils are to handle or conclude nothing but that which is ecclesiastical; and are not to intermeddle with civil affairs, which concern the Commonwealth, unless by way of humble petition, in cases extraordinary; or by way of advice for satisfaction of conscience, if they be thereunto required by the civil magistrate."

Who will say that the Synod in declaring Messrs. McMurray, Guy and their adherents to be the only members of this corporation and as such entitled to all the rights and immunities appertaining thereto, was acting within the limits of this law? Your Honor is, I doubt not, satisfied that at least one Synod, since the apostles' times, has erred grievously.

But one case has been cited for the Relators, which seems to give some show of judicial approval to their high prerogative doctrine in regard to the Synod—*Missouri vs. Farris*, 45 *Mo.* 183—in which the question was as to the validity of the action of the General Assembly of the Old School Presbyterian Church in 1866, with regard to the "Declaration and Testimony." The case decides nothing as to the power of the Assembly over individual congregations, but it does determine, substantially, that in that denomination the Assembly may, at its pleasure, make and unmake the Presbyteries.* I do not believe that that is the law. I am sure that that case would have been differently determined by this Court. But even if the Missouri Court were right in so deciding, that case is no precedent for this, for the point therein adjudicated is radically different from that in question here; and the Synod of the Reformed Church is hampered by restrictions from which the General Assembly is, in the view of the Missouri Court at least, free. On the other hand, *Gartin vs. Pennick*, 5 *Bush* 110, decides the action of the Assembly in 1866 to be ultra vires.

I am confident, therefore, that your Honor is with me thus far at

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* In the late case of the *St. Charles Church*, the Missouri Court refused to apply the doctrine of *Missouri vs. Farris* to the case of a congregation.

least, and I need not waste time nor breath in satisfying you that the law sets limits to the jurisdiction of this arrogant Synod and that the decision of questions of civil right lies far beyond those limits. If this matter were otherwise in doubt the constitution of this Commonwealth and the decisions of this court settle it. The fifth article of the constitution vests the judicial power of this Commonwealth in certain courts, among whom this Synod is not mentioned; and in the judicial determinations of this court it has been said again and again that the judicial power thus distributed is the Commonwealth's whole judicial power, and that no tribunal, not mentioned in the constitution, can exercise any of it. We cannot, therefore, have much difficulty in this state in reaching positive conclusions upon a question, which was at one time in Scotland somewhat vexed; that is, whether ecclesiastical bodies have an inherent power of deciding controversies. I must admit that this Synod is a Court within one somewhat celebrated reading of Mr. Justice Blackstone's definition; "A Court is a place where *injustice* is judicially administered;" for if a body ever, with malice prepense and aforethought, deliberately set itself to the work of doing injustice, that body is this Reformed Presbyterian Synod. But I contend for the reasons already stated, that this Synod is not a Court ex-proprio motu, and can exercise no jurisdiction over this corporation and its corporators, which is not explicitly granted to it by the charter, or conferred upon it by that system of religious principles to which the charter subjects the corporation. I therefore, ask my learned opponents to point out that charter provision, or religious doctrine, which vests in the Synod jurisdiction, to conclusively determine who are the members of a Pennsylvania corporation. All their learning and ability will not avail them in the search for such an authority. It cannot be found.

I submit, therefore, that I have established beyond all doubt the Synod's want of jurisdiction over the subject matter of their action. I need cite no authorities upon the point that their decree is consequently void. The books are full of cases in which it has been held that where a court oversteps the boundaries of its jurisdiction its action is a nullity. The Marshalsea case, 10 Rep. 68, 76; Notes to Crepps v. Durden, 1 Sm. Lead. Cas. 821, 832.

I might safely rest the Defendants' case at this point, but I

must confess, that it gives me great pleasure to comment upon the manifold defects in the decree of that Synod, who have in defiance of law and justice, attempted to wrest from the Defendants rights which are very dear to them. Admitting, therefore, for the sake of argument, that the Synod had jurisdiction of the subject matter of their action, I argue, in the next place, that the decree is void for want of notice to those whose rights are sought to be affected thereby. The record of the commission recites service of process upon seven out of the four hundred and thirty corporators whom the decree seeks to disfranchise. The Synod of 1869 before confirming the decree gave notice to no one of those corporators. For want of such notice, therefore, the decree is void as against the Defendants and their electors. Bagg's case, 11 Rep. 93; Rex v. Gaskin, 5 Term R. 199; Elder v. Reel, 12 P. F. Sm. 315.

But the Relators' counsel have very ingeniously suggested that in the case of Commonwealth v. Green, this court held certain action of the Presbyterian Assembly to be legislative and not judicial in character and, therefore, not void for want of service of process; and they have endeavored to argue that this Synodical decree falls within that rule. The answer to that is this; that the action of the General Assembly was the legislative dissolution of a union which had been made by legislative action, and that the decree dissolving the union did not affect any individual congregation but by its express terms permitted any such to attach themselves to the nearest Presbytery connected with the General Assembly; Mr. Chief Justice Gibson indeed says, in his Opinion (4 Wh. 601,) "Now had the exscinded Synods been cut off by "a judicial sentence without hearing or notice, the act would have "been contrary to the cardinal principles of natural justice; and "consequently void." But even if the Synodical decree in this case were, as it is not, legislative in character, the Relators' case would not be aided thereby. No citizen can be deprived of his property unless by the judgment of his peers or the law of the land, and this court has again and again held that that constitutional provision forbids the accomplishment of such robbery by a legislative rescript. What you have denied to the legislature of

this free Commonwealth, you will not permit to be done by any body of ecclesiastics.

The Synodical decree may be considered—first, as disfranchising the Defendants and their electors; or, second, as making new terms of corporate membership, and constituting Messrs. M'Murray, Guy and others to be the corporate members in accordance with those new terms. It is obvious that, if the decree is to aid the Relators in this cause, it is to be considered in the light first above stated; for, if the Defendants' electors are not thereby disfranchised, their election having been held in strict accordance with the charter, the Trustees elected by them are entitled to their offices, and the Jury must, then, find for the Defendants. The exigency of their case compels the Relators to rely upon the action of the Synod as a valid and effectual disfranchisement of the Defendants' electors. But here again the law is clearly against them—Bagg's case, 11 Rep. 93; Binn's case, 2 Binn. 441; Evans *vs.* The Club, 14 Wr. 107, make it clear that a corporator cannot be disfranchised unless the charter gives an express power of disfranchisement; or unless he has been tried and found guilty of an offence indictable at common law, or of a breach of his duty as a corporator. If there be no charter power of expulsion, it is necessary that the corporation try him upon charges regularly preferred and after due notice. The charter in question here contains no express power of disfranchisement. It cannot be contended that the Defendants or any one of their electors has committed an offence indictable at common law, or is guilty of any breach of corporate duty. If there had been any such dereliction on the part of any of them, no charges have been preferred nor has any trial been had. It follows, therefore, that in the eye of the law the Synodical decree has failed of its intended effect, and no one of the parties sought to be affected thereby has been legally disfranchised. From this it results that the Defendants and their electors are, the Synod to the contrary notwithstanding, members of the corporation, and the Defendants, as officers elected by them, are entitled to their offices and to a verdict at the hands of this Jury.

Nor is the Synodical action, considered as constituting Messrs. M'Murray, Guy and others as corporators, in any closer accord-

ance with the law. The charter nowhere imposes adherence to Messrs. M'Murray and Guy, or the signing of papers addressed to Synod, as terms of corporate membership. But it is beyond the power of any body, even the legislature of Pennsylvania, to alter this charter without the consent of every one of the corporators. Dartmouth College case, 4 Wheat. 518; Brown *vs.* Hummell, 6 Barr 93. Here, again, the Synodical decree is void.

Even if the Relators' case admitted of a triumphant answer to each one of the objections I have stated, I should still be able to dispose of the Synodical decree by calling your Honor's attention to the fact that the Synod and the Commission proceeded in violation of the laws of their own Church. I have already shown your Honor that the Synod of 1868 had no authority to appoint the Commission, for they had no original jurisdiction of the subject-matter, the jurisdiction of the Philadelphia Presbytery having already attached and that body having entered without delay or remissness upon the judicial investigation of the difficulties in this congregation, and no appeal having been taken from the Presbytery to the Synod. Secondly, the Commission did not pursue the powers delegated to it, but took cognizance of the Presbyterial suspension of relators and founded their decree upon it, while the Synod had not authorized them to review the Presbyterial action, but had restricted them to the consideration of difficulties existing in the congregation. Thirdly, the Book of Discipline prescribes the procedure for ecclesiastical trials, but the Commission in their haste to enter judgment and issue execution against the Defendants and their partisans, neglected to try them before condemning them. Fourthly, the Commission, not having followed the terms of its original appointment must entirely depend for the validity of its action upon its subsequent confirmation by the Synod of 1869, but the Relators and their adherents seceded from the corporation nearly a year before the Synod entered their decree of confirmation.

I have but one more objection to suggest. If these ecclesiastical decrees were all that they are not, and if the law bound your Honor to enforce them, instead of compelling you, as it does, to disregard them, I should still rely confidently on the fact that the Relators have not brought themselves within the terms of the de-

crees. There is not, if your Honor please, any evidence in this cause showing that the Relators' electors were signers of the various papers submitted to the Synod of 1868, or were adherents of these signers. For aught that has appeared in proof the Relators were on the first Monday of January, 1870, elected by the votes of those who had no more to do with the Synod of 1868 than I had. I submit that the Relators are bound to bring themselves, by clear and positive evidence, within the terms of the decree upon which they rely.

I thank your Honor, and I thank you, Gentlemen of the Jury, for the patient attention with which you have listened to me. I did not intend to have taken up so much of your time. So far as I am concerned, I submit the Defendants' case to you, confident that your verdict will be for them, for they have justice and right on their side.

Speech of Judge Porter.

May it Please Your Honor:

Gentlemen of the Jury:—I have listened with a great deal of pleasure to the last argument made before you. Every word of it has made a deep impression on my mind. Sometimes, I think, we feel more interest in the success of our pupils than we feel in our own. Certainly I feel that my colleague has greatly distinguished himself by the conclusive argument he has made here, both on the facts and the law of this case. His duty has been fully and faithfully done. Gentlemen, your duty is yet to be done, and mine is yet partially to be done; and I confess to you that protracted as this trial has been, painful and laborious to you, I must say I almost envy you the place you hold in this tribunal, for you, Gentlemen, have the power to give back peace to this distracted Church. One of the most beautiful and expressive words in any language is the word peace. Most men desire it—desire to have peaceful consciences and homes, to lead peaceful lives, and to die peaceful deaths. One of the first objects of the Gospel was to bring peace and good will to men. One of the most memorable sayings of our Saviour was this, "Peace I leave with you, my peace I give unto you." The peace and harmony of this Church, for a period of nearly seventy years, were most remarkable. You have heard how it was founded, and how it has prospered. It seems to have been conducted first in an upper chamber of a house, where one or two of the people of God assembled for the purpose of worshipping Him. Then it was held in a school-room, and then taken to that little Church which Mr. Stuart now owns in St. Mary's Street. Thence it was removed to Eleventh Street, and there it assumed the large proportions which it since has held in the public eye. Its founder, the elder Dr. Wylie, became also a professor of theology and a teacher of youth. His name and his reputation became known, not

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May it Please Your Honor:

Gentlemen of the Jury:—I have listened with a great deal of pleasure to the last argument made before you. Every word of it has made a deep impression on my mind. Sometimes, I think, we feel more interest in the success of our pupils than we feel in our own. Certainly I feel that my colleague has greatly distinguished himself by the conclusive argument he has made here, both on the facts and the law of this case. His duty has been fully and faithfully done. Gentlemen, your duty is yet to be done, and mine is yet partially to be done; and I confess to you that protracted as this trial has been, painful and laborious to you, I must say I almost envy you the place you hold in this tribunal, for you, Gentlemen, have the power to give back peace to this distracted Church. One of the most beautiful and expressive words in any language is the word peace. Most men desire it—desire to have peaceful consciences and homes, to lead peaceful lives, and to die peaceful deaths. One of the first objects of the Gospel was to bring peace and good will to men. One of the most memorable sayings of our Saviour was this, "Peace I leave with you, my peace I give unto you." The peace and harmony of this Church, for a period of nearly seventy years, were most remarkable. You have heard how it was founded, and how it has prospered. It seems to have been conducted first in an upper chamber of a house, where one or two of the people of God assembled for the purpose of worshipping Him. Then it was held in a school-room, and then taken to that little Church which Mr. Stuart now owns in St. Mary's Street. Thence it was removed to Eleventh Street, and there it assumed the large proportions which it since has held in the public eye. Its founder, the elder Dr. Wylie, became also a professor of theology and a teacher of youth. His name and his reputation became known, not

only throughout the city in which he lived, but throughout the State and even the nation, as a man of ability, piety and learning. The University of Pennsylvania soon claimed him, and made him one of its professors; and now some of the most eminent men in my profession who received their early instruction at his hands, have come here to talk with the son, and remind him that his father was their faithful instructor. He seems to have been, Gentlemen, a most remarkable man, and to have conducted this Church most successfully to its high eminence; and when at the close of life, after so long a ministry, how gratifying it must have been to him, bending as he was under the weight of years, that the people of his love and his choice should voluntarily and unanimously take the burden from his shoulders and lay it upon those of his son. Soon, Gentlemen, the reputation of the son began to rival that of the father. He became also a professor of theology, and his Church became one of the very first in this denomination, largely attended by strangers, attracting attention for the purity of its doctrines, and, more than all, remarkable for the peace and harmony which long prevailed in it. In an evil hour, Gentlemen, for I must speak very plainly—the interests involved here are far too large to permit me to do otherwise—in an evil hour, Dr. McMurray, who has evidently guided and directed this whole proceeding was proposed as an Elder of the Church. One man opposed him. Many, many years ago, when Mr. Stuart's reputation was not so large as it is now, and he had not the experience he has now, he objected to Dr. McMurray's election. He said, "Gentlemen, I caution you," "beware! that is a man who will give us trouble; do not elect him." Was not that wonderful foresight?

My learned friend, Mr. Price, has dealt very kindly with Mr. Stuart, and when he referred to his wonderful efforts during the war, and to the fact that through his exertions some six millions of dollars had been raised for the relief of our suffering soldiers, he spoke very truly and told you it was a God-given power. How do you think that sentence would have sounded in the Synod of 1868? A God-given power to a man whom they held to be unworthy even to partake with them of the communion! Gentlemen! There was something in this forecast that looks to

me quite as much like God-given power. But for that event to guard against which, Mr. Stuart raised his warning voice, the same peace that pervaded this Church for seventy years would to this time have remained unbroken. The new elder was not long in finding opportunities of making trouble. A man intent on a thing—as deliberate a man as he—as cool a man as he—as capable a man as he of carrying out such a resolution as he seems to have formed here, does not generally wait long for an opportunity.

It happened that a young lady of this Church, betrothed to a gentleman belonging to the Church of Dr. Wadsworth, then, as now, one of the most truly evangelical churches in this city, was desirous of celebrating with him the communion of the Lord's Supper. As they were about to enter into a union for life, they seemed to have had a desire to sit down together and partake of that sacrament, which more than all others typifies the union of the soul with Christ. Mr. Stuart gives her a token to be handed to him, so that he can meet with her and partake with her in this great ordinance, established by the Saviour of men. Gentlemen, this was exactly in accordance with the written law of their book, that those may be admitted to occasional communion who would be admitted to membership in the Church. Dr. McMurray hears of it, and then comes the first disturbance. I want you to mark how these troubles commenced; and certainly, this part of the case introduces us to a scene probably never paralleled in any Church, heathen or Christian. God grant that I may never see it in any other Church.

The session is soon called together. What does the beloved pastor of the Church say? He said, Brethren, let us, in a matter of so much importance, implore the divine guidance.

Dr. McMurray, will you offer prayer?

No, Sir!

Mr. Guy, will you lead us in prayer?

No, Sir!!

Not willing, either of them, even to invoke the aid and the blessing of the God of the Church, in a court of the Church, assembled on a question like this! Merciful Heaven! What a scene! Was there ever such a scene enacted before in any Christian church?

Remember, gentlemen, that these two elders are the very per-

sons to whom, by your verdict, you are asked to commit this Church for all time; men not willing, even, to raise their hearts to God, that He might guide them through the difficulties which were imperiling them. But there was a man of large, warm, Irish heart there. It had been their custom, as it seems, to stand during prayer. Mr. Stuart, falling on his knees in the presence of the pastor and these elders, his eyes swimming with tears, so besought God for His guidance and mercy, that when he rose up there were more moist eyes there than his. Even our opponent, Mr. Guy, said, Brethren, I think we had better not go any further with this business. Gentlemen, I would rather have the large and generous heart which prompted that prayer, beating in my bosom, than to own the costliest church that ever cast its spire toward heaven. That that man should stand before you as one pronounced by its Synod, unworthy to be a member of this Church, only illustrates the terrible injustice which has characterized these proceedings.

Dr. McMurray soon found another opportunity. His pastor was going on successfully with his church. Dr. McMurray was its elder. There was a pastor of another church who found it more congenial to his nature, or more profitable, to write libels against the pastor of this Church, than to write sermons for his own congregation. Very soon you find Dr. McMurray, an elder of the Church, on Sunday morning, before the sacred service had commenced, directing the sexton to deposit these libels in the seats of the worshippers, just before the word of God was read, and just before the text was uttered!—so that the persons present might read these libels against their own pastor, before hearing his prayers and his discourse!! And this is the man to whom you are asked, by your verdict, to commit this Church. Suppose, that in place of the kind attention which you are giving me, some one had, just as I was rising to address you, stepped up and put into your hands a libel against myself. It would not be very hard to find one. How could you hear what I am saying? What attention could you give to the argument I am about to address to you? Here was a minister of God about to address his congregation, upon the most solemn of all themes on which mortal man can be called to meditate, and his own elder, with

the vows of his eldership upon him, could find no better employment on a Sabbath morning, than to circulate these atrocious libels against his pastor, so that the moment the services of the sanctuary were commenced, in place of attending to the reading of the Word of God, and the prayer and the sermon, every man might have a libel in his hand against the preacher who was to utter the sacred message. Where can you find a parallel to this? Gentlemen, it strikes me as awful. I remember that some years ago, a person in this city, who had uttered a libel of a few paragraphs, found himself in the criminal court. I knew the Judge of that court. I knew him when his head, now covered with official honors, was not as high as the railing which I touch there, but I knew him to be a just man, a wise man, a firm man. I watched the course of the trial, and the defendant got a long term of service in the penitentiary. I met the Judge, soon afterwards, and said to him, I congratulate you on the performance of your duty. I said, Judge Brewster, that is the way in which to maintain the public peace. It is these offences which lead to bloodshed. I congratulate you on the noble discharge of your duty; and Judge Brewster would have made short work, gentlemen, whilst he sat on the bench of that Court, with such libelers as these, if they had been brought before him.

Well, gentlemen, there was a collection to be taken up—a collection ordered by the session. Those who are appointed statedly to take up a collection are obliged to take it up. They have no choice about it, when the church session orders it. There was a school connected with this church, called the mission school; not ecclesiastically connected with it, but some members of the church, teaching in the school; no ecclesiastical connection at all, no representation of the one in the other. The school was carried on chiefly at the expense, as you have heard, of Mr. Stuart. It was resolved by the session to take up a collection for the purpose of feeding and clothing these poor children. Dr. McMurray declined to take it up. We have heard a good deal here about subordination and insubordination. Here was an elder of the church, a member of the session, required to do this thing, and sitting bolt upright in his pew, refusing to take any part in it whatever. There you have insubordination, gentlemen, truly. What was

the reason this collection was not taken up by him? Because they sing hymns in the school. Well, they had a right to sing hymns there. This church has no control over the school. I am in favor, gentlemen, of singing psalms in this church, because it is the rule of the church. I am in favor of singing hymns in other places in which the rules of the church do not forbid it. Dr. McMurray knew they had this right, yet he saw here another chance of difficulty. He was longing for it. He was watching from time to time to see where and how it might be stirred up. Think of a man, an elder in the house of God, refusing to be instrumental in taking up a collection for the purpose of feeding and clothing these poor children, simply because they sang hymns. Gentlemen, suppose a man were to come to my house some cold winter night for something to eat. I say to the servant, put up some tea and coffee for him, and some bread and meat. I say to the man we are preparing something for you, my good man, but while they are doing so, I would like to ask you a question. Do you sing?

Yes, sir, I sing a little.

Do you sing hymns?

Well, sir, I do not know what they call them. We get together at night and we do sing something. I do not know whether it is a psalm or a hymn.

Repeat a verse to me:

How sweet the name of Jesus sounds,
In a believer's ear!
It soothes his sorrows, heals his wounds,
And drives away his fear.

That is what you sing, is it? But surely you sing psalms also. Yes, I suppose I do. Our children in the Sunday-school have learned some. Let me hear another.

Nearer, my God, to thee,
Nearer to thee!
E'en though it be a cross
That raiseth me;
Still all my song shall be,
Nearer, my God, to thee,
Nearer to thee.

I say to him, that is enough. Sir, you can go. John, never mind the tea and coffee, this creature sings hymns; and my servant shows him to the door in a cold winter night without money and without food. What would you say of me, gentlemen? What do you say of an officer of a church who deliberately refuses to be instrumental in taking up a collection for the purpose of feeding hungry children, because they sing hymns? What do you think of Dr. McMurray? Is that the man, to whom, by your verdict, this church is to be committed? Then, gentlemen—*God help the poor!* I feel like appealing on such a question from earth to Heaven. I feel like appealing from man to God! I do not believe that God in his good providence can ever allow such a result to come about as the success of the plaintiffs in this case. And for three years, there never has been one minute of time, in which myself or my colleagues have wavered for a moment in believing that this thing would come out, not only exactly according to law, but to the principles of God's eternal justice!

Then, gentlemen, comes this grand scheme of Dr. McMurray and Mr. Guy, by which they think they are to obtain possession and control of this church. How does it begin? The Synod directs a convention to be held to consider the expediency of a union among Christian churches, that is, for the purpose of bringing Christian churches nearer together, making them a little more united. We all expect to be united in Heaven when we get there, and the thought seems to have taken possession of this Synod, that it would be better that churches generally should come a little closer together now,—each church retaining its psalmody and its other distinctive peculiarities. Not a thought ever arose in the mind of any human being until Dr. McMurray put it there, that there was or could be any trouble about the psalmody in such a union. Not at all. That word union, gentlemen, is a glorious word. You know how we plume ourselves upon our National Union—how we have fought for it. It is a glorious word wherever you use it. Are you aware, gentlemen, that there are not two states in this Union whose laws are alike? Yet we not only have a Union, but we insist on maintaining this Union, and we say to every man, touch it if you dare. It has cost blood enough, and treasure enough to make it worthy of preservation. When we hear of somebody

down in Mississippi cutting somebody's throat, we do not rush to Washington and petition for a dissolution of the Union. Even when we hear of some one down in Tennessee or North Carolina who is guilty of that other enormous crime of singing hymns, we do not get up a petition to dissolve the Union. There is such a thing as a union for great, general, comprehensive purposes, with distinctive peculiarities of many sorts. That was what this union was intended to be, and Dr. McMurray knew it as well as I know it. He knew that there never was a thought in the minds of those who met in that Convention, of laying a finger on the psalmody of this church. But it was a grand opportunity. It was a grand occasion, to make some of these poor people think that something was going wrong about their psalmody.

These union meetings were held, and the discussions which the witnesses mentioned took place. Then came the election of the sixth of January, 1868. A very extraordinary meeting certainly it was:

> An universal hubbub wild,
> Of stunning sounds and voices all confused.

Gentlemen, what produced it? There was nothing said about changing the Psalmody. Not a word dropped from any human being, showing an intention on the part of Dr. Wylie, ever to allow a hymn to be sung in the religious services of that Church. Never. I put the question both to him and to Mr. Stuart; I put the question that they might come out and say before you, on their solemn oaths, what they intended on that subject, and you heard their answers. What then brought that large concourse together? There never was a meeting held in that Church, perhaps never in any church, in which such an uproar took place. There were strange faces there, faces of men never seen at any previous meeting of the Church. They have accounted to you for thirty-six of the one hundred and twenty-seven who were shown to have been illegal voters; so ninety-one were proved to be illegal voters. Not one of you knows anything about them. Where are they? Who brought them there?

At that meeting, gentlemen, there was one man who was not afraid of anything. His pastor had been libeled, and these things had been circulated for months. This man went there and said,

result as it may, I am determined the people of this congregation shall know why their pastor is libeled, and what he has done worthy of this abuse. He went there for the purpose of making, simply, a statement, and offering a resolution. The first man who opposed him was Dr. McMurray. Think of it, an elder of the Church, rising up in such a meeting to prevent a fellow-elder from explaining the character of libels on his pastor's character. Has such a thing ever been seen before? Well, then there was another uproar. There was hissing, there was groaning. There were, according to one of the witnesses, all the noises of the steam whistle, as the speech was being made, and as the resolution was about to be put. Now mark you, the resolution in regard to the pastor, passed that meeting unanimously, even Dr. McMurray refusing to give a vote upon it. That was the time to toe the mark! That was the very time! If you had uttered libels against a man, and the libels had been spread before you in that way, I think you would not have wanted the courage, if not to justify them, at least to say something about them. Observe the character of the people, and the vote on that resolution. It was carried unanimously in the pastor's favor.

Do you recollect the expression of one of their witnesses, Mr. Tait, one of the most decided witnesses against us? He told his story bitterly, but on coming to speak of this meeting, he says, when the resolution was proposed, it was carried unanimously, because "we all loved our pastor." I say, *Behold how they loved him!* And from that minute to this, gentlemen, every act of the congregation would have been unanimous, but for the course pursued by Dr. McMurray and Mr. Guy; two men just as different as any men you could find in any community; one, a warm-hearted, impulsive man, carried away by his feelings at the time; rash and violent at times, but seeing his error and immediately acknowledging his fault. The other cool and deliberate, for one year, two years, perhaps ten years, intent at the work of breaking up this Church, of which you are desired to take part in the consummation. Dr. McMurray might well have said with Lady Macbeth, "That which hath made them drunk, hath made me bold."

What could that meeting do, I put it to you to say; what could they do? Could they tell who had a right to vote? Where were the materials? There was not a pew-book there, for this thing

was quite unexpected. Dr. Wylie, the pastor, was not there, nor the roll of communicants, to show who were members of the Church. What could they do? Simply allow the persons there to vote, and to determine afterwards whether the votes were legal. A strange proceeding counsel have said. What else could they have done? What would you have done if you had been there? There was not the means to test a solitary vote. They appointed tellers;—what is a teller?—a man who tells, a man who announces, and, therefore, derivatively, a man who counts. The teller of a bank counts money. He does not determine who shall open accounts there. He does not judge. He does not decide. He simply counts. Four men were appointed tellers—formerly they went around with a hat—here they had boxes provided; the people came up and the votes were received. What else could they do? I say the most sensible thing they could have done was just to pass the resolution which was passed, and to say that the votes should be received, and that they should then be referred to those who only could tell whether they were sound votes or not. But, said Dr. McMurray, that resolution did not pass. He said he suggested that anybody who wished information could look at the books. We have twenty-three witnesses that bear testimony to the passage of the resolution; and even the eminent counsel on the other side are silent on that point. The fact is proved with such overwhelming testimony, that you cannot doubt about its passage. That resolution was to determine the *validity* of the election. It ran thus:

"At the conclusion of the balloting, and previous to the report of the tellers, it was on motion ordered that the votes polled remain in the custody of the tellers, until the lists of the parties voting be submitted to the session and Board of Trustees for their examination, in order to ascertain whether all the votes cast were legal, (protests against certain votes having been entered during the progress of the balloting,) and no certificates of election to be given until it had been ascertained that no illegal votes had been cast. Several other motions were offered touching the question, but were afterwards withdrawn. It was then asked, could not the votes be counted, and a report of the same be made to the meeting? After some discussion this was finally agreed to, with the understanding

that the validity of the election be under the restriction imposed by the former resolution."

At the next meeting, on the 13th of January, a report was read of what took place. At this meeting there was another uproar. It was worse, some of the witnesses said, than any political meeting. There were men there who had no interest in the Church, and of course every resolution offered was voted down by the same body of ninety-one, whom you heard of at the former meeting, now demonstrated to have been illegal voters. Mr. Price said they claimed a majority of thirty-two. Where were those ninety-one? They were not only at the first meeting, but they were at the second meeting.

Dr. McMurray was a physician, going from house to house. He had been at this thing probably from September, saying to every member he met, Take care of your Psalms. They are going to take away your Psalmody; but taking care not to tell his real object. He knew better than that. These poor people did not know half the time what they were voting about. The cry, we are told, was Psalms or Hymns. Where did they get that? There were no Psalms or Hymns in the question; we all know that now. Where then did they get that idea? Then came that extraordinary attempt on the part of Mr. Gordon to organize a new Board; a little while before midnight, and about as quietly as men would be likely to go upon such an errand. Coming back about twenty minutes past eleven, and being engaged twenty minutes, they must have started at about 11 o'clock at night. They had no key. You remember the question with which I endeavored to spear Mr. Taylor—Mr. Taylor, you know, is the son-in-law of Mr. Guy, and Mr. Young is the son-in-law of Dr. McMurray,—reminding us of the grace which Boden Teuch used to pronounce, night and morning, "Bless me and my wife, My son and his wife, We four and No more." What a nice family party it was!—Who heard George Gordon give the notice? It was evidently addressed, if at all, to men who were expected to hear it. I said to Mr. Taylor, that motion on the validity of the election, was under consideration by the Board and Session, and you knew it; did you not go to organize that Board, no matter how the committee might report? He stopped, hesitated, and said, "Yes, we did!" "Yes, I believe we did!" You see,

gentlemen, what a tale this tells. They knew what had been done at that election, and that they did not mean to abide by the action of the referees, although they had unanimously referred the question to a tribunal selected by themselves. This spurious board had made up its mind that it would organize in that place, and have possession of that building, no matter what the committee might report. I put this to you, so that you may look at the unfairness of it. It shows what these gentlemen thought of their own proceeding. The idea of such an organization as this, is preposterous.

Mr. Gordon says he gave the notice at this meeting, probably selecting the very time when the steam whistle was loudest. Those immediately about him did not hear it. Mr. Johnston had no notice. Mr. Graham had no notice. They got into the Lecture-room, however, and very soon it was discovered by the meeting that there was an attempt to organize. Then Mr. Stuart and a few of his friends went there. You remember how the Gordon party was described by one of the witnesses. He said they looked very sheepish, they looked very much scared; and that is the pretended organization, from which they date the rights they claim in this case.

In the meantime, the Board and Session were busy at the investigation. They had one difficulty to contend with, they had not the ballot boxes. Why had they not the ballot boxes? Because one or two tellers appointed by the other side had got hold of them, and would not produce them. Why would they not produce them? They were determined that the board and the session should not see these ballot boxes, and up to this minute of time they have not produced them in evidence in this case. Part of the tickets were written, and part of them printed, and although the name of the voter was not on each ticket, the handwriting on the ticket might have been proved, and this would have afforded a clue to those who had deposited the illegal tickets. That was the reason why they persistently refused even to let the board or session see a ballot that had been cast. Can you doubt the statement of Mr. Stuart when he says he had spent a most laborious month in examining these names? They were read in the presence of Dr. McMurray in the session. He heard the

whole list read over distinctly as names of illegal voters, and was not able to name one man on that list who had the right to vote, not one! Of course then the election, according to the resolution, was invalid.

At the meeting in February, the reports were made and the question of acceptance came up. Gentlemen, what else could they do than accept the reports? It was a special reference to a special tribunal to determine a particular fact,—whether or not illegal votes had gone into the boxes. Suppose you had a controversy with a neighbor. Suppose Mr. Lord and Mr. Taylor had a controversy with regard to a particular matter of business, and they were to say we shall refer it to Mr. Welsh and to Mr. Young and to Mr. Potter, now sitting beside them on the jury. Suppose you had signed an agreement to that effect. A report comes in. What can you do but accept it? One party or the other is always disappointed in every such reference. The word "accept" is different from the word "receive." When a man is invited to dinner, he says, Mr. Smith has the pleasure of accepting such and such an invitation. It does not mean that he merely accepts the note; he does more than that; he accepts the dinner. A man fails in business, he says, I offer you forty per cent. in compromise of your claim, and he gets an answer; your proposition is accepted. What does that mean? That the debtor has simply got the information that his letter has been received by the creditor? Would you, as a debtor or creditor, understand it in that way? Take the case of a young gentleman who writes a note to a lady. He writes one note, tears that up; writes another, tears that up; writes another and remains in fear and trembling until he gets an answer which says to him in substance that his proposition is accepted. What does that mean? That his letter is accepted? no, that *he* is accepted. And one of these young ladies who has ever written such a note, would never believe you if you told her that she had simply accepted the note but had not accepted him. There is much force in the word accepted. This meeting did as it seems to me, exactly what they ought to have done. In these resolutions, they appointed a particular tribunal for the purpose of settling a fact. When the report came they could not have done otherwise than accept it. Take the case of a claim against an Insurance Company. There is a difficulty

about the amount of the loss, and the matter is referred to a referee, and he determines you must do so and so. What can you do but accept his report? Well, gentlemen, these reports were accepted. Why did we not give the names of the illegal voters? I will tell you. You have seen an illustration of it. Here was a woman—a widow—who voted at this election, as she thought, according to the rules of the church. She had no right to vote, for she had not paid anything for the support of the church for a long time; a respectable, pleasant-looking lady she was, reminding us of that widow who is mentioned in Scripture as having given the two mites. I put the question as mildly to her as I could, with the highest consideration for her feelings. I said, my good Madam, have you paid any pew rent? I have not, sir, she said. I was poor. I had three children to support, and it was generally understood that I should not pay. The idea of putting the name of that good woman on the list and bringing her here, and submitting her to examination as if she had committed a fraud on the church, would have been the extreme of cruelty. Therefore they did not report the names, but the committee told Dr. McMurray personally in the presence of the session, that they had examined the list. That the list was open to him, open to any of the committee, open to anybody who felt that they were aggrieved. Was not this a sensible and a kind mode of procedure?

But why did the board hold over? What else could they do? Suppose the stockholders fail to elect directors of a bank at the appointed time. What are the old directors to do? Are they to run out of the bank or leave the deposits in the street? Suppose a Rail Road Company do not elect a board of Managers; are the cars to stop on that account? What is to be done? Why the old board hold over.

Well, gentlemen, you see this chief actor, Dr. McMurray, up to this point, after this long effort, had been defeated. He seems then to have adopted Satan's conclusion when expelled from Heaven:

> "What tho' the field be lost?
> All is not lost; the unconquerable will, etc."

He was not going to stop there. He had been defeated at the

meeting in which the libels on the pastor were produced. He had been defeated at the election. He had been defeated notwithstanding the acts of these illegal voters. What was he to do?

Gentlemen! I cross-examined Dr. McMurray for hours, as he stood there. Did you know the object of that? Did you expect that I intended to prove anything by Dr. McMurray? If you did you were mistaken. It was just the contrary. It was done that I might hold Dr. McMurray up before this jury for a sufficient length of time, to enable them to see the material of which the man is made—a blinded man, a prejudiced man, his natural sense and reason utterly perverted by the long cherished desire of his heart, that of upturning everything in this church; so that he was scarcely capable of giving a clear answer to any one question that was asked him. You may remember that I tried him thus: Dr. McMurray, who wrote the remonstrance which you took up to the Synod? "I wrote the remonstrance." Did you write the whole of that remonstrance?" "Well! I—, No—, I got the *form* from Dr. Steel." (A gentleman who has been very prominent in this suit by the way). The form consisting of these words, "To the Reverend fathers and brethren." That is what the form consisted of. Well! who wrote it, Dr.? Who wrote the first paragraph? "Oh! Dr. Steel wrote part of the first paragraph." Who wrote the second? "Well, I wrote this—Dr. Steel wrote that." Who wrote the third? who wrote the fourth? and so it went down to the eighth and last. Thus you find the hand of a pastor of a neighboring church employed with that of an elder of this church in getting up a remonstrance to be circulated secretly among the members of this church, for the purpose of splitting it to pieces. What would you say if I got up a paper and circulated it among the clients of my friend, Judge Brewster, and quietly produced it in court against him some Saturday morning? Gentlemen! It seems to me this was an extraordinary act on the part of the pastor of a neighboring church, and considering that there was scarcely one single word of truth, as I will show you, in the remonstrance, what a fearful act it was! What I have to say of Dr. Steel on that point is that I think he had far better have been writing sermons for his own people. He was the moderator afterwards of the Synod that suspended Mr. Stuart, taking

mighty good care to vote both against him and this church, at every stage in the progress of the business. But how was the remonstrance signed? Signed in blank, sent to a large number of these poor people and their signatures obtained without their ever having seen the remonstrance, a paper containing the most atrocious libels against their own pastor and friends. There was one person who signed it at Dr. McMurray's house. He tells you he did not hear anything said about Dr. Wylie when it was read. Not a word did that man hear of what now appears to have been in the paper—he signed it at Dr. McMurray's house, and in his own office, in the presence of two or three people; others signed it on slips of paper, and they told you they had not time to read it. It was signed by persons, 50 or 60 of whom came back to the church, the moment they got at the truth.

Gentlemen, if ever a paper was gotten up on false pretenses, this was. Suppose a promissory note was exhibited to you signed by six persons, and you were told that four of them who had signed it, knew nothing about it, would you receive such a paper? would you act upon it? would you consider it worth anything? If ever men were grossly imposed upon, this Synod was so imposed upon when this paper was produced there. I can not believe there is one man who would have cast his vote against this church in this Synod, if he had known the facts that have come out here.

Well, the remonstrance was gotten up and signed. It was another thing to adopt it. How was that to be accomplished? How was it to be got through the Synod? It was to be got through by what is known in political life as electioneering. A correspondence was to be inaugurated. The members were to be plied with publications and documents. Men living one thousand miles out in the West, who knew nothing of this church, were to be thus influenced. Dr. McMurray, I said, Did you apply to Mr. A. on the subject? "Mr. A.—I do not remember." Going over the members of the Synod, I said, Did you write to B. on the subject? "B.—I don't remember." Did you write to C.? "C.—I don't remember." Did you write to D.? "It is likely, I don't remember." Thus we went through the list. I could not get from him the name of a single man to whom

he had written, and we knew, beyond contradiction, that he had written to most of them, making himself in the eyes of the members of the bar perfectly ridiculous, because the phrase, "I do not remember," has become a by-word with us. In the case of Queen Caroline, certain Italians were brought to testify, and they thought their safest course was neither to admit nor deny anything that was asked them, and for days they were put through a series of questions in regard to the acts which the Queen was said to have committed in Italy, to which one answer only was returned. "Non mi ricordo" became memorable words. Consequently, when we hear a man, who has been a chief actor in a scene, answering 30, 40, or 50 times he does not remember, he becomes ridiculous in the eyes of a court. What a most extraordinary scene it was! After all this electioneering; after all this cramming of the members of the Synod!

The remonstrance somehow came before the Synod, and then commenced the enactment of such a scene, as may God in His mercy, avert from any other of these Church courts. At the modern feasts to which we are sometimes invited, which we call dinners, before the heavier and more solid viands are brought on, the palate is treated to a little *bonne bouche;* a delicate oyster; a highly flavored soup; some little condiment or other. There was a great tragedy to be enacted here, in regard to this remonstrance. They might not be quite ready for it at once, and accordingly Mr. Geo. H. Stuart's case is introduced first. Mr. Stuart tells you he went to the Synod as profoundly ignorant of a contemplated attack upon him, as if a personal assault had been made upon him in the witness stand. These gentlemen say that he said he was known all over, and they dare not touch him. If he was known at all, I presume he was known all over. His head is certainly known to everybody. You saw the clear, prompt and quick answers, that were given to every question that could be put to him. They were not such as these, "It is likely;" "I did, perhaps;" "I do not know;" "I have no knowledge;" "I do not remember." His head is pretty well known; I think his heart is pretty well known also to those who know him at all. Mr. Stuart did say that he had taken a hymn book in his hand when worshipping in another congregation; but the fact

came out here, as you heard that he cannot sing at all! He has admitted that he makes a noise, which by courtesy people sometimes call singing. There is not a word of testimony from any witness, not a syllable, that in doing this he violated any rule of this church. If there is, I should like to see it. He said, when I go to other churches I take part in singing hymns. I wish people would sing them oftener. There is a power, gentlemen, in these hymns, that you seldom find in written discourses. This church has not forbidden the singing of hymns in other churches. Mr. Stuart said he had done that thing in other churches, but as to having sung hymns in the worship of his own church, he put himself on his denial in the face of the Synod. There is his written denial:

"I hereby solemnly deny each and all of the allegations and charges contained in the preamble and resolutions offered by Rev. A. G. Wylie, in manner and form as they are alleged, and I protest against the right of Synod to pass such preamble and resolutions, and ask that this my denial and protest be entered on the minutes."

The moment the charge was made against him, he denied it. Tell me he came in and admitted the charge! With this paper before you, that is absurd. Well, gentlemen, there was no notice. He was entitled to three citations. There was no trial. Suppose I should stand up in this court and say of a juror that he had been guilty of some offence against the law, and before the man left, the court should put him on his trial. He makes a solemn denial and files it on the records of the court, that he has never done such an act. Not a single witness examined; not a particle of testimony taken; and the record of the court is made on that man's case, in the books of the court, suspending him as a juror. What would you think of a court that would do an act like that? It happened that Mr. A. G. Wylie, the present pastor of this seceding church, was in that session of the Synod. You have heard Mr. Stuart's sickness described. You have heard how he suffers from Asthma. Sometimes it has happened, as you have heard from the testimony, that for ten or twelve days and nights together he has been held up by two men, one on each side of him—unable to lie down or sit down. It is a most horrible malady. Each breath is expected to be the

last. I do not know whether you have heard of the way they have in China of taking a man's life for certain offences. It is to prevent him from sleeping. They have persons appointed to keep him awake, and by the 13th day the man usually dies. Asthma is a horrible malady. Mr. Stuart was suffering with it intensely at the time in the hotel, in the hands of an eminent physician. One of the members of the Synod arose in his place, and informed the Synod—that this was a sham—that it was all pretense; and that gentleman, Mr. A. G. Wylie, subsequently took the prize by becoming pastor of this church in the Horticultural Hall, and continues to be their pastor, up to this time! Why, gentlemen, there was not a child in Pittsburgh, that could not have told these people of the enormity of their proceeding. If they had expelled Mr. Stuart from his seat as a member of the Synod, that, anybody could have understood. We might have seen the injustice of it, but we could have seen some sort of approach to reason in it. They say nothing at all of his right to sit as a member of Synod, and suspend him as a member of the church! I put the question to their witnesses time after time; you say your church has existed 300 years; is there such an act to be found in its records from the hour of its birth down to the present time? Every one of them said no.

Gentlemen! It was an act of monstrous folly. And what has been the consequence? There was a venerable man who arose in the Synod and said, Brethren, this act will split your church to pieces. He was right. The Presbytery of Pittsburgh has gone off to another denomination, and Dr. McMaster, as you have heard, the ringleader in all this terrible business, unless I ought to accord that high distinction to Dr. McLeod, has gone off with his whole party to the United Presbyterians. Thus you see the folly of the act. They have split their church in twain. And for what? History will inquire why such a disruption took place. Was there any difference about doctrine? Was there any difference about the mode of worship? Was there any dispute about whether psalms or hymns were to be sung? Not at all. It is one of the most extraordinary facts, in this extraordinary business, that that Synod split this church to pieces, when there was not one single doctrine of the church or one of its testimonies in dispute. Is not that a remarkable fact? The Pittsburgh Presbytery going off; Dr. Mc-

Master and his party going off; trouble produced in this church for years,—and not a single principle in dispute. Is not this the most extraordinary thing that ever happened in the history of any church?

Well, gentlemen, how does this bear on the question in this case? I will tell you how it bears on it, though I am sure I cannot tell you in any clearer terms than Mr. Patterson has told you. The Attorney General seems to have labored under some difficulty on this point. He has announced that he did not know that he would ascertain until the day of judgment, how Mr. Stuart's suspension bears on this case. He can ascertain a little sooner than that. The Presbytery met and took action in regard to the proceeding. They could not have done otherwise. What could the Presbytery have done less? The business of these gentlemen who are preaching the gospel, is to bring persons into the church, not to drive persons out of the church. If the Synod could meet and without notice put men out of the church at its own will, why admit them? The members of Presbytery were bound to act in self-defence. They were bound to take action of some kind. They simply said to themselves, if this Synod will meet and without any notice, without any offence, without any difference of doctrine, without any trial, turn out members from the church, what is the use of our attempting to bring people into the church? Here was an act, unprecedented in its history, and unauthorized by its book. Therefore the presbytery simply suspended its relations to the Synod, remaining in the Synod, resolving to remain in the Synod, but condemning the act which the Synod had thus performed, and resolving that these relations should remain suspended until the Synod had receded from the error into which they had fallen.

Well, gentlemen, very soon after this, the Commission was let loose. I have called it more than once in these discussions a packed commission. Do you observe that there was not on that commission a man who had voted in favor of Mr. Stuart? Not a man!—The church itself was marked as the next victim. Do you think that was accident? No, gentlemen, it was all a part of one general plan. They did not dare to put on that commission one man who had shown a friendly disposition to Mr. Stuart. Suppose I were to come into this court with one of you as my client, and you were

to see on the jury twelve men, every one of whom had given a vote against you in some lodge, in some institution, in some society of which you were a member. Would you think that a matter of accident? What sort of chance had this church with this commission? It was not intended that it should have any chance. Its dismemberment was a foregone conclusion. The matter was arranged at Pittsburgh, and these parties came here to consummate the work. At that time there were five hundred corporators of this church who were reported as paying pew rent, or who were in communion with the church. Of these five hundred, six only received notice. The commission did their work. They reported to the Synod and they got it confirmed.—It seems that during the progress of the business, Dr. Wylie made some allusion to it from his pulpit. Dr. Wylie was at a meeting of the session, at which Dr. McMurray presented a paper with regard to Mr. Stuart. That paper related to the shaking of the fist as you remember. Dr. Wylie tossed it back to Mr. Young, who had presented it. Mr. Young says it struck him. He has even worked himself into the belief that if it had been a sword, it would have cut off his head. Just as if he was some modern John the Baptist, and Dr. Wylie was some modern Herod, and that Mr. Young's devoted head was to be cut off and sent in a charger to somebody. Mr. Young said it actually struck him just over his heart, that heart which he seems to suppose the repository of so many generous emotions, in which, however, a large part of all this persecution and all this trouble, seem to have originated. Dr. Wylie noticed these matters from his pulpit, and in such a way as I think very few men could have noticed them. When he was proceeding to speak on the subject, Mr. Guy immediately rose. It would have been incredible, if it had not been proved—but Mr. Guy rose and said, "That is a falsehood." Now think, what would a man of the world have done? What would you have been tempted to do? In the presence of his entire congregation, an elder rising and saying, that is false! Dr. Wylie replies, "Sir, I am the only person entitled to speak here; if you wish to make any remarks you must do so in some other place." Could any man have replied more mildly? When this remonstrance came about, Dr. Wylie read it to his congregation. Read every word of it to his congregation, and then

said, If I am guilty of that of which I am charged, I ought to be in the Penitentiary, and certainly those who signed that remonstrance will not expect me to visit them." Could any man have replied more temperately to an attack upon him?

Gentlemen, there is one portion of a discourse which he delivered very soon after that, which I will read:

"And now, Brethren, for the first time in our pastorate, permit us to address to you a personal appeal. No one surely can feel a deeper interest in your welfare than we do. Our loved and honored father was your first pastor, and continued so for nearly fifty years. We have felt as if he had left to us in you a most precious trust, which we should deliver unimpaired to the one who may succeed us. How can we bear to think of the flock, 'the beautiful flock,' for which he labored and prayed so earnestly, so faithfully, so long, becoming divided and destroyed? Ourselves, your own child and offspring, born among you, with you in the sanctuary from infancy, a pupil in your Sabbath-school the first day it was organized, afterwards a teacher there—permitted more than thirty years ago to sit down with you at the Saviour's table to commemorate His dying love, called by your unanimous voice to be your pastor nearly twenty-five years ago, about half our life-time—ever heard by you with respect, and received in your houses with affection—ever sustained by you with most generous kindness—ever receiving the greatest forbearance for our many, many deficiencies and faults—we have felt that you were 'our joy and our crown.' And shall unfounded suspicions, shall any misconception of motives and purposes destroy our confidence and love?—alienate and separate those who might still be as harmonious and as peaceful and as happy as they have been before! May God forbid!"

It does my very heart good when I see a Christian minister acting in that way. This gentleman holds a very important position in a religious sense as well as in a social sense, and when I see a man thus temperately receiving such attacks upon him, when I see such replies as that to the most outrageous insinuations, see a man insulted in the presence of his whole people, and then replying so mildly, I can but wish that some of these persons here as plaintiffs would imitate his conduct. It seems to have been literally true, that when he was reviled, he reviled not again, when

he suffered, he threatened not, but committed himself to him that judgeth righteously. I say, gentlemen, this was conduct worthy of a Christian minister.

[Here the Court took a recess.]

Mr. Porter, resuming, said :

It is admitted that but for this Rescript, or, as they call it, Resolution of the Synod, our opponents would have no case at all, and we shall not soon forget the air of triumph with which they produced it here. It seemed at first as if the Attorney General thought they had only to produce this extraordinary paper to settle the whole controversy. I have shown you, sir, the manner in which this result was obtained. As to the decree itself, the counsel on each side seem to entertain widely different opinions of it. If the doctrine maintained apparently by the Attorney General and Mr. Price were true, that a party had nothing to do but simply to produce the decree of an Ecclesiastical Court in a civil tribunal, and if the Ecclesiastical Court were the party to judge of its own powers, the civil courts might be shut up. If a Synod, meeting a thousand miles off, composed I think, as it is now, of twenty to thirty men, without trial and without testimony, coming to a conclusion in regard to a large and valuable property, can produce it before a civil tribunal, and say there, the thing is decided and we are to be the judges of the effect of our own decision, what would be the use of civil courts ? What would be the use of the provision in our constitution, which declares that the judicial power of the State shall be committed to certain judges elected and commissioned in a certain way ? Sir, I say, the law of Pennsylvania utterly repudiates that doctrine, and thus we have steered clear of the very difficulties which have surrounded many of the courts of other States. The State of Pennsylvania has taken sound and solid ground on this subject. If I were to produce here a proceeding in a court martial showing the conviction of certain persons, the first thing you would say would be this,—a court martial! What! In time of Peace ? Here in Philadelphia ? You would say at once I do not care what facts they had to support the charge, or to what conclusion they came, that tribunal had no authority to make such a decree. If we were trying an ejectment, and a decree was produced of a previous action of ejectment and

verdict in the District Court of the United States, you would say at once, that court has no jurisdiction to try actions of ejectment. It may try a question of sailors' wages, but it cannot try a question of the title to a house in Philadelphia, and therefore, the subject matter being beyond its jurisdiction, its decree is worth nothing. If I were to ask you, sitting as a chancellor for a decree in regard to a patent right, the bill alleging that I was the inventor, and that somebody was infringing my right, and that the question of infringement had been determined in an action for damages in the District Court of Philadelphia, you would tell me that amounts to nothing. That is an action which can be brought and tried only in the Circuit Court of the United States. Now, sir, the authority of Ecclesiastical Courts, the extent to which they can go, and the extent to which their proceedings can be re-examined in the civil courts, is as well settled as any part of the law of Pennsylvania. Your Honor will remember the case of the St. Mary's church, 7th Sergeant and Rawle, 517, one of the earliest cases on the subject. It was a Roman Catholic church in this city. The charter provided that the Board of Trustees should be composed of four laymen and four clergymen, and that when any alterations of the charter were made they should be made in the first instance by its Board of Trustees. A board met, composed of four clergymen and three laymen, and the alterations of the charter were acted upon and signed at that meeting, and afterwards approved by the Supreme Court. It was held that inasmuch as the body which adopted this amendment was composed of three laymen and not four, the whole proceeding was void, for the reason that the ecclesiastical body which originated it had not been organized according to its own law, its written charter. In regard to the case of the Commonwealth *vs.* Green, 4th Wharton, 531, the famous Presbyterian case, so often cited, there is not a word or syllable of the opinion of the court in that case which does not assume that the civil courts will inquire into the authority of ecclesiastical courts to act upon any matter in which they profess to act. In regard to the able opinion of Chief Justice Gibson in that case, many persons differ as to the results there reached, and some persons who were of the old school party doubted some of the positions laid down there, but as to the great

substratum of the opinion, no lawyer in Pennsylvania ever doubted, namely, that it was competent for the Supreme Court of Pennsylvania to review the proceedings respecting the four Synods which were exscinded, and to inquire what authority the General Assembly had for dissolving the plan of union between the Congregational and Presbyterian churches formed in 1801. Indeed, I do not know that it has been seriously urged in any court in Pennsylvania up to the trial of the present case, that a decree of an ecclesiastical court cannot be examined and inquired into by a civil court. This is the law of Pennsylvania, and if it were not the law, the most monstrous results would follow. If a wretched, miserable body of men can meet two or three thousand miles off, composed of two or three dozens of persons guided by the most intense prejudices, men whose minds are warped and blinded to such a degree that they can not see the truth; and if they can make a decree transferring property worth a hundred thousand dollars from one body to another, which cannot be inquired into by any other tribunal, where are we? Where have we drifted to? The next thing would be a decree of an ecclesiastical body transferring Mr. Price's house to me. The next thing would be a decree by such a Synod transferring some one of these churches to a church of some other denomination. On that doctrine, this Synod may meet and transfer this church in Broad Street below Spruce, to the Episcopal church. They might send a commission here with authority to take down this church and remove it altogether. They might pass a decree and confiscate the property wholly. Sir, not only are we at liberty to examine the extent of the authority under which the special tribunal acts, but to inquire whether the authority was properly exercised in the mode which it adopted; whether the notice required by law has been given; in what form the act is claimed to have been done; if by virtue of its appellate jurisdiction, whether the first or primary tribunal has acted, and then whether the appellate tribunal has properly acted? Now I do not believe that anything the Attorney General may urge in his concluding argument will be able to shake the conclusions which my colleague and myself have arrived at in regard to this point, that is, that there must have been jurisdiction to do the thing; it must have been within the scope of the authority of the

body to do it; and then it must have been done in the way provided for in their own standards. If that be the law, sir, this jury will have very little trouble.

I say then, *first*, under this head, they did this thing in the wrong way, if they had the right to do it at all. The secession took place in June, 1868. This decree under which they claim to have done it was not made until May, 1869—nearly a year after the secession. Now, sir, how can they rely upon a decree which was made in 1869, to justify an act that was done in 1868? They not only seceded in 1868, but they made a new organization. They elected a new pastor. They gave up their pews in our church. Almost all of these corporators who went off, paid and settled up the last score. There was one gentleman it seems who did not. Doctor M'Murray, if my recollection of the testimony does not fail me, left a quarter's pew rent unpaid! *De minimis non curat lex.* He goes, it seems, for great principles. His memory is not retentive of such small matters as debts due to a church by himself. All these other gentlemen paid their pew rent, up to the first of June, 1868, and left. I wonder what this jury would have thought if the Southern States had achieved their independence, gone off, established themselves as a separate power, and had then come back and said to us, We want the Philadelphia mint! Oh! you want the Philadelphia mint! Yes, *we want* it. On what ground? Well, they would have said, it was built by taxes to which we contributed: we had an interest in it; it was built by our money. But you have gone off. You have erected yourselves into a separate organization. That, sir, was one of the dangers of secession. If these gentlemen on the other side of this case were entitled by law to all the rights they claim, there was a very easy way of establishing their rights—just remaining with us until the next election, and then depositing their votes in the ballot boxes once more. That is what we said to the southern people. Don't go off. Don't commit such folly as this. Just wait until the next presidential election, and turn the scale by your votes; and whatever grievances, real or imaginary, you may have, will soon be redressed. That did not suit the southern people; they would go off. These plaintiffs seem to have taken precisely the same course, and they seem to think the decree passed by this

Synod a year afterwards has some retroactive effect that will in some way justify their secession in 1868. That is now one of the prime difficulties in their case. This is not a new subject to you, sir. I read your opinions and the reports of your opinions on these very topics, before I ever had the pleasure of seeing your face. They are not new to you, and I ask your Honor whether you ever heard of a case, I ask the counsel on the other side to show us a case, where such a secession as this has been committed; where a party without any decree in its favor at all has gone off, made a separate organization, elected a new pastor, conducted services in a new place, given up the use of the pews in the old church, and ceased to be corporators, whether you or they ever heard of a case that will justify them in coming back and taking the property from those that remain? Sir, this charter gives certain rights. There was a large amount of money contributed towards the building of this church. The church building did not get there by magic, nor without large contributions, and the persons who made them were corporators, holders of pews in the church, persons who paid pew rent. How can men that carry themselves out of the category of corporators, give up their pews, cease to pay pew rent, cease to be communicants in the church, go off, and form another organization, how can they on any case that ever has been decided by any court in Christendom, come back and claim the property from those who have staid behind and maintained their rights? This thing of withdrawing was a perilous act, sir. They concluded to take the consequences of it. They came forward and said, We do not desire to hold our pews any longer. Here is the last payment of pew rent to you. You may rent our pews to other persons. We never mean to commune in this church again. We are going some place else. We are going to take the risk of it. How can they, after an absence of three years, come back and say, We want the old church? If they can show a case which will justify that, let our friends do it.

They undertook at first to say that the Synod had original jurisdiction. That is the next point to which I wish to call your attention. Had the Synod when it received this precious remonstrance, authority by virtue of its original jurisdiction to make a decree which should have the effect of giving to Dr. M'Murray and

Mr. Guy this church building? They were overwhelmed here. The clear testimony given by Dr. Wylie, Dr. Sterrett and Dr. M'Auley was conclusive on this point, and explained it, I am sure, to the satisfaction of everybody who listened to them. The plaintiffs, I say, were overwhelmed here. The first note we had on this part of the case was from Dr. M'Leod. Judge Brewster put the question to him thus: You had original jurisdiction of this matter? A sort of supreme court, I think, your Synod is or something in that way? But their book was produced. If anything is plain from that book, it is that the Synod has no original jurisdiction of any matter which is under the cognizance of a lower judicatory, unless you establish conclusively, as matter of fact, remissness on the part of this lower judicatory. Here is the language: "The presbytery in case of ministers, and the session in every other case, is the competent authority to commence and finish a process for scandal, unless a reference or appeal be made to the superior judicatory; but the superior judicatory may, when occasion requires it, direct the inferior to institute a process; they may commence and finish a process themselves, or appoint a commission to do so, *in cases in which the inferior judicatories are remiss in the exercise of discipline*, or otherwise incapable of applying a remedy to an open scandal." Suppose, said the counsel, the lower judicatories were corrupt, could not the superior judicatory take it out of their hands? Let them establish that fact before they put such an illustration. Let them establish the fact of the corruption, and then the question would arise. That therefore is a point that does not come up in this case, because these lower judicatories, whatever mistakes the other side may allege them to have made, are admitted by all sides to have proceeded with the utmost good faith and the utmost desire to come to the proper result. It is true any one concerned in a trial may decline the authority of the judicatory which undertakes to judge of a case over which it has no cognizance. In such cases, a written paper specifying the grounds of the declinature is to be laid before the judicatory, and a copy must be presented to that judicatory to which the appeal is first made. No appeal can be admitted unless notice is given to the judicatory before which the case is to be tried, at or before its definitive sentence, and unless

the appeal is delivered in writing within two weeks from the time it is taken. All these are the admitted provisions of their own book.

Now, may it please your Honor, what was before this session? If we can successfully establish that the matter which the Synod acted upon was before any one of these lower judicatories, at the time the Synod acted, it is as plain as daylight, that unless our opponents can show these lower judicatories were remiss in their action, then the Synod had no jurisdiction. I doubt very much whether my friend, Judge Brewster, will have the courage to attempt to throw any suspicion upon this proposition. I want then to inquire just for a moment what was before the session. Mr. Stuart's case had come before it. I mean the attack on Mr. Stuart, with regard to the shaking of the fist at those who had attempted to organize the spurious board. Mr. Young was told that the meeting was a specially ordered meeting of the session, and that the case could not be taken up then, but would be at the proper time, and so far as that matter was concerned, there was no further application to the session to take it up. Action then was taken by the session, and they were not remiss. There was not time for remissness. The next matter that came before the session was this list of voters. There, as my friend, Mr. Patterson has shown you, there was a special delegation of authority by the congregational meeting to the session and board of trustees to do a particular thing, a particular piece of work, to count a certain number of votes, and to ascertain the character of the voters. The session had nothing whatever to do with it, as a session, as a church court. Nothing at all. The congregational meeting might just as well have referred the question of the illegality of these voters to the directors of the Philadelphia Bank, and the Synod would have had just as much authority to pass a decree removing the directors of the Philadelphia Bank from office, as to make a decree with regard to the session or the presbytery for what they did under that delegation of power. It was a special delegation of authority on a special subject, outside of their jurisdiction as a court altogether, and therefore there could be no appeal. Sir, these parties all agreed on both sides, and were perfectly willing in the last few days, to refer the whole of this contro-

versy to you as a special umpire. You could not have acted. We told them a judge of the Supreme Court would not so act. Suppose you had accepted the office, made a decree, signed it, and transmitted copies to the parties; could anybody have taken an appeal to the Supreme Court in Banc, from the result so arrived at by you as a referee? On the same principle, what the session did in regard to these voters never could have been appealed from, either to presbytery, or to Synod, or to any other power. That leaves but one other thing—the suspension of Dr. McMurray and Mr. Guy. In regard to that, the session took action, the session made an appropriate entry upon its minutes, and these minutes have been before the court. The result was these elders were suspended from their offices as elders. They could have taken an appeal to the presbytery when the session had finally acted, and when the presbytery had acted they could have taken an appeal to the Synod. You see how they missed it. It sometimes happens that persons engaged in long machinations, extending over a considerable space of time, involving many details, miss it just in the most important point of all. Some weak stone in the foundation, some weak part of the structure, not noticed when it is going up, gives way, and the whole tumbles down.

By the Court. Could they have taken an appeal from that merely precautionary suspension without declining the jurisdiction?

Mr. Porter. No, I think not; not without declining the jurisdiction. I meant to say they could have proceeded with regard to that, or they might have declined the jurisdiction.

Court. If they had not declined the jurisdiction, could they have appealed from the precautionary suspension?

Mr. Porter. I think not; that would be contrary to the principle on which all courts act; from the inferior courts they could go by appeal, only after final action. That strengthens our position very much. They might have brought the thing to a final determination before the session and then have taken their appeal to the Synod. Dr. McMurray had counsellors, I doubt not. Those who were concerned in getting up this remonstrance, and helping him to write it, making themselves busy-bodies in other men's matters, I have no doubt were willing and ready to make suggestions to him, and to give him advice as to the right course to be taken.

Under such influence, doubtless, he wrote a paper to Dr. Wylie, and addressed it to him personally, in which he spoke of the pretended authority of this session and of the proceedings suspending him. Not being addressed to the moderator in his official capacity, Dr. Wylie returned it in the same envelope in which it came. The envelope was produced here and we called for the paper itself, because we had a little curiosity to see it. It was returned to him, I say, and a copy taken of Dr. Wylie's note, in which the latter told him, this is not properly addressed. You cannot address a paper like this to me individually; you must address it to me as moderator. You cannot talk of the pretended authority of the session in a private note addressed to me as a private man. Make your declinature in a proper way, and then it will be received. Such a declinature amounted to nothing. There was never a declinature at all. He refused to make it. Is not the difference palpable? Suppose I address a note to you, sir, at your hotel, or place of residence,—a private note, complaining of something you have done sitting here as a judge, what would your Honor do with it? You would put it in the fire, tear it to pieces, throw it away. If I have done anything you would say, in my official capacity, to which he can take exception, let him come into court and take a proper appeal, or make a proper motion, but do not let him be writing private notes to me in my individual capacity. You would not even file such a note on the records of the Court. What could Dr. Wylie have done with such a paper? He returned it to the writer. There was a courtesy in that which probably a civil court would hardly have practised. I say, therefore, there was no declinature. A copy was not served as the book requires. No paper was addressed to the moderator. No paper was addressed to the Court, and therefore it is reduced to certainty that that case remained before the lower judicatory. It was in an unfinished state before the lower judicatory. Dr. McMurray then goes into presbytery, and undertakes to present a paper to presbytery which he calls a declinature; and the moderator taking the paper in his hand and looking at it, says to the moderator of the session, who was a member, also of that court, Sir, has the session received any notice of this? No, sir! The session has received no notice. Then Dr. McMurray we cannot receive this paper. The book requires,

when you present a paper like this, that you should have given notice of it to the session. The reason for not doing it was simply to heap insult on the session. It was to give insult to Dr. Wylie. When a member of the presbytery said no notice had been given whatever to the lower court, the presbytery refused to touch it. Now, sir, if anything has been demonstrated by the testimony here, it is that you cannot skip over one of these judicatories any more than you can come directly from a Justice of the Peace to the Supreme Court of Pennsylvania. You must have your case tried in the one Court, and go by appeal to another. You cannot pass one of these courts. Then, sir, Dr. McMurray did not take his appeal or his declinature in the proper way. The consequence of that was, he left it in the hands of the lower judicatory. What else did the presbytery do? The presbytery behaved very kindly; they took more notice of his case, did more for him than any man who comes into court with insult on his lips, ever deserves. I am sure, sir, if I were to address you as a member of this court, as Dr. Wylie was addressed by Dr. McMurray, I am sure the next time I arose in the court, you would say, not a word from you, sir, without an apology,—not another word until you put yourself right before the court. You cannot insult this court, one moment, and then get up and address it in another moment. But this presbytery passing by the indignity, appoints a commission to consider these very difficulties on the part of this church, and they appoint it the very same day in which this affront was offered. Was there remissness here? That commission—I only wonder that these gentlemen have not the names of their committees changed and called something else. I only wonder that the acts practised upon their ancestors by some of these high commissions have not deterred them from using the very name of commission. It always suggests to me the high commission under Jeffries, though I am bound to say no commission, not even that of Jeffries ever claimed the powers that are claimed for this Synod. The presbytery appointed a commission on the same day, a commission to take into consideration the very subjects which the Synod afterwards considered,—and it sat up to within two days of the meeting of Synod. The commission took the subject into consideration again after the adjournment of the Synod, and continued to consider

it with as little delay as any court was ever guilty of whose transactions I have ever been called upon to investigate; and they would have continued to do perfect and entire justice (Dr. McMurray and his friends having a representative upon the commission) until they found that by the act of secession, the parties had gone off from the church, and that no decree which the commission could make would have the least effect. There is another of the evils of secession. Now, sir, one would naturally inquire, why the Synod did not pause at this point, instead of trampling upon everything that is held sacred in the forms of this church? Why did they not at least inquire whether they were going according to their own forms? They were told the moment the subject was taken up in the Synod everything in respect to the absence of notice that any tribunal could ask in such a matter. They were told the exact and particular facts, as I have given them to you, in regard to the action of the Session and Presbytery. Nay, more, there was a report of the presbytery read to that very Synod containing a particular statement of what had been done with regard to these very matters, and containing notice of the fact that the commission was then sitting with perfect power to make a proper and just decree. But, no, I might as well go out to the track of the Pennsylvania Railroad when one of those large trains of cars is coming in at the rate of twenty or thirty miles an hour, and attempt to stop it with a rye straw. No, sir, they were not to be stopped. They had personal notice. They had notice from the Presbytery. They had their own book before them, but nothing could stop them, and the extraordinary scene is presented of a body like this, proceeding directly in the face of every requirement of its book. What is more striking to the mind of a lawyer, than the injustice likely to be produced when a lower Court is acting on a case during the very time an appeal to a higher Court is proceeding there also? The Common Pleas has jurisdiction in Quo Warranto; the Nisi Prius has no jurisdiction in Quo Warranto as determined in many cases, and lastly in the case of the Credit Mobilier Company,—no jurisdiction except to try an issue of fact before a jury. Suppose a proceeding in Quo Warranto in the Supreme Court, and one in the Court of Common Pleas, and an appeal taken in the latter case to the

Supreme Court in Banc, before the Common Pleas had finished its work, the Common Pleas making one decree, and the Supreme Court making another in the very same matter. There can be nothing in the way of injustice to suitors greater than the violation of these forms. This was the singular position in which the business got in the Synod,—got by the wrong-headedness of Dr. McMurray in refusing to submit to any form of authority whatever, to do anything less than just what he pleased to do, and that is the way such men are generally caught,—when mere prejudice takes possession of the mind, and the reason is utterly beclouded. There is where he caught himself. He got his head into the very noose he had prepared for others.

Let me now call your attention to another point for a moment. It is a point that seems to me so important, that the cause ought to depend upon it to a large extent. The obligation under which this church came by its charter, was to "adhere to and maintain the system of religious principles declared and exhibited by the Reformed Presbyterian Synod of North America." That charter was granted by the State of Pennsylvania. It gave important rights of property. The money invested in this building was invested on this one condition only,—that the congregation worshipping there should adhere to and maintain the system of religious principles declared and exhibited by the Reformed Synod, etc. It is not pretended that there has been the slightest departure from the doctrines of that Synod.

The *Court.* The point the relators make is this, that it is one of the principles maintained that members of the church shall be in subordination to the Synod.

Mr. Porter. I am coming to that in a moment. I will only say here that, in my view, that is a part of the case easily disposed of. Before going to that question of subordination, I call your attention to the terms of the charter. "Who adhere to and maintain, etc.," maintain the system of religious principles, that is, the principles of religion as distinguished from the forms of religion; such as the doctrine of the trinity, the doctrine of the atonement and other doctrines that are considered in these books the vital principles of religion. The members of this church are to adhere to and maintain these religious principles as declared and exhibited

by the Reformed Synod of North America. Now, sir, so far as my knowledge goes, there never has been an instance in which any court has given effect to the decree of an ecclesiastical tribunal, unless there was some question of religious faith or doctrine in dispute. I will take the opportunity of running over some of the cases, and you will find that in every case in which any civil court has given any effect to the decision of an ecclesiastical court in a question of property, it has been where an ecclesiastical court has decided between one of two bodies, that this body or that body held the true doctrines of the church. Why should they not give effect to such a decree as that? How are you to determine which party is right in a contest between two parties as to the doctrines of the church? How can you determine what are the true doctrines of the church, and which party holds the true doctrines? Therefore, where such a dispute has taken place, and the ecclesiastical court of last resort has said this party or that party holds the true doctrines of the church, such a decision is on every reason and principle entitled to the greatest respect. These are the only cases in which a civil court has ever allowed any question of property to turn upon a decree of an ecclesiastical court, namely, where an ecclesiastical court has pronounced a decree in regard to a difference of doctrine. In the case of Craigdallie *vs.* Aikman, 1 Dow, P. C. 1, it was a question as to the voluntary support or compulsory support of the pastor. In the case of the Attorney General *vs.* Pierson, 3 Merivale, 353, it was a question between Unitarians and Trinitarians. In Lady Hewlitt's charities, 7 Simon, 309, very much the same kind of question arose. In Attorney General *vs.* Gould, 28 Beaven, 485, the question was between close communion Baptists and open communion Baptists. In Dill *vs.* Watson, 2 Jones, Irish Exchequer Reports, 48, the question was whether one of the parties continued to hold the doctrine of the trinity, or whether they were not Arians—Arius having held peculiar views with regard to the character of the Saviour, and with regard also to the Holy Spirit, contending in some part of his writings that the Holy Spirit did not proceed from God, but that it was an emanation from the Saviour. In the case of Miller *vs.* Gable, 2 Denio, 492, the contest was between Arminians and Calvinists. The case of Field *vs.* Field, 9 Wendell, 394, was the controversy

between the Hicksite and Orthodox Quakers. In Skilton *vs.* Webster, Brightly's N. P. 203, the very corner-stone on which our friends on the other side seem to build their hopes, if they have any hopes at all, the question was whether the Webster party held doctrines that did or did not conform to the resolutions that had been adopted at Piqua, which were alleged by the other party to be the true and only doctrines of the church. There, Mr. Webster was found to have violated these doctrines, and consequently the action of the ecclesiastical court was deemed entitled to the highest consideration and respect. In the Commonwealth *vs.* Green, 4 Wharton, 531, the question was between the Old School and New School Presbyterians. In Sutter *vs.* the Reformed Dutch Church, 6 Wright, 503—one of our most marked cases—Mr. Smiley, whose conduct produced the difficulty, was found by an express decree of the Classis to be a Unitarian. That did not suit the Dutch Reformed Church, and a contest arose over it. The decree of the Classis which had acted, if not conclusive on such a point, certainly every one must admit entitled to great respect. In the case of Watson *vs.* Farris, 45 Missouri, 183, which my friend, Mr. Price, commented upon with so much triumph, the act and testimony men were held to have been wrong. The action of the General Assembly substantially was that in their protest the doctrines of the church had been violated. I do not say that the General Assembly arrived at the conclusion by the proper means, but you will find the General Assembly convicted the declaration and testimony men as holding doctrines which the General Assembly had pronounced not to be doctrines of the Presbyterian Church. Finding that the General Assembly had pronounced a decree on that subject, the Supreme Court of Missouri adopted it as correct; and if that case is good for anything at all, it is good for that, and it is good for nothing more. Now, sir, having thus commented on every case of any importance here or elsewhere, I throw down the challenge once more to my friend, the Attorney General, to produce a case in which a civil court has ever given a decision, adopting the law of an ecclesiastical court, except when some subject of doctrine was in dispute between the parties. The idea never seems to have occurred to any one before the trial of this case, that where there is no dispute about doctrine—no controversy

between the parties, either as to faith or practice, or anything relating to religion, that the Synod could by its decree transfer property from one body to another. If they can do this, they can transfer Mr. Barnes' church to Dr. Boardman's congregation, or transfer Dr. Boardman's church to John Doe or Richard Roe.

Now, sir, as to this matter of subordination, to which your Honor has called my attention, what is to be the limit of that doctrine? This is one of the terms of ecclesiastical communion to which every member of this church subscribes on being admitted to membership, viz.:

"A practical adorning of the doctrine of God our Saviour, by a life and conversation becoming the Gospel, together with *due subordination in the Lord*, to the authority of the Synod of the Reformed Presbyterian Church in North America."

I want to know first what these words mean. What does due subordination in the Lord to the authority of the Synod mean? It is due subordination in the Lord; in respect to the Lord; in respect to religious doctrine,—matters of faith. Can it mean any thing more than that? If it does not mean due subordination in regard to religious principles, does it mean that the members of the church who accept these terms of communion must be in due subordination to the authority of the Synod, in regard to secular matters; in regard to how many dry goods or how many pounds of mackerel a man shall sell, or what amount of property he shall buy, or how many horses he shall drive? Does it mean subordination to the Synod as to what sort of a hat he shall wear, whether it shall be as broad in the brim as the hats worn by some of the ancestors of my friend, Mr. Price, or as narrow as those of some of the young gentlemen disporting themselves to-day on Chestnut Street? Does it mean that a man who assumes this relation to the church shall be subordinate to the Synod in regard to the practice of his profession? Suppose the Synod should resolve, that hereafter all practitioners of medicine whenever called to prescribe for old ladies should give only camomile tea. Suppose Dr. McMurray were called to see an old lady with rheumatism. He says, madam, I know exactly what you want. You want red flannel, but you know I must be in subordination to the Synod of my church. Here I find the Synod has acted in this

matter; I must be subordinate to them. I really can preseribe nothing for you but goose grease. What odor would some of these good divines be in if they were to be in subordination in regard to these matters? That was not what was meant, sir, by the provision of their book. I endeavored to spear Dr. MeLeod with a question on this very point. You say, Doetor, the members of this chureh are to be in subordination to the Synod. What do you mean by that? Now, Dr. McLeod is one of the sharpest men in that Synod. He took that stand to get testimony before this eourt, which the court had expressly ruled out, and I was as determined he should not get sueh testimony in. Dr. MeLeod was brought here for the purpose of earrying this ease through for the relators; I was just as determined that it should be tried according to law, and I speared Dr. MeLeod with the question. Doetor, you talk about subordination. Tell me what you mean by subordination to the Synod? and with a degree of learning and astuteness, whieh you might have expeeted, he said, I mean, "Due subordination to the Synod." I said, I have got that already, what do you mean by it? Well, he meant due subordination in the Lord. I have got that too. I want you to tell me whether this due subordination that you talk of does or does not apply to men's seeular affairs; what does it apply to? "It applies, sir," he said with a great deal of emphasis, "It applies to those matters which are contained in our standards." Agreed, Doctor! we have brought you down at last. We have brought you to a point in which we ean test your meaning. A member of the chureh must be in due subordination to the authority of the Synod with regard to matters contained in the standards of the chureh. What is eontained in the standards? I read here of eleetion, the Holy Spirit, regeneration, faith, justifieation, sanetifieation, the state of man after death, perseveranee of the saints. These are the matters eontained in the standards, and these are the matters in which members of this ehureh are to be in subordination to the authority of the Synod. Now show me what the Synod has done with regard to any one of these matters. Then, sir, if the Synod has taken no action in regard to these matters, I want to know in what this chureh was insubordinate? In what have any of its members, Mr. Stuart or anybody else, been insubordinate? These ecclesiastical courts have regular powers eommitted to them,

which they are to exercise with regard to the churches. Let anybody show me that it is one of the powers of this court to take a piece of real estate and transfer it to certain men by name. That is what I want to see.

By the *Court.* Due subordination in the Lord to the authority of the Synod, means subordination to all its constitutional and legitimate acts.

Mr. Porter. Within the sphere of its authority.

The *Court.* Yes, all its constitutional and legitimate acts, all the acts that are authorized by the laws and usages of the Church.

Mr. Porter. Yes, Sir, and in reference to that let these Plaintiffs show that these parties whom we represent have violated anything the Synod has done within the scope of its constitutional authority and power as an appellate court of the Church. Then they will be able to show something more worthy of consideration than anything they have yet presented. They are to be subordinate to the Synod just so far as the Synod acts within the limits which the book prescribes, or within the limits of any other jurisdiction which they may have from any other source; but whenever the Synod gets out of the limits of its jurisdiction, the act is utterly void, it binds nobody. Whenever they act on a subject within the limits of their jurisdiction but act in the wrong way, violative of the forms contained in their book, then again I say, the act is void and nobody is obliged to submit to it, or in more technical phrase to be subordinate to it at all.

Let us look then at this Remonstrance and see what the Synod actually did, and how far its action was within the limits of its jurisdiction. As to that part of the allegations in this paper which relate to the action of the Session respecting the illegal voters, I need not say anything in this connection about that, for what has the Synod or Presbytery to do with that? The next clause relates to the conduct of Dr. Wylie in participating in the communion with other Churches on which, however, the commission took no testimony, and did not act. They seem indeed to have abandoned it. I asked Dr. Wylie about these acts, and he fully justified himself in what he had done, and no doubt, these same reasons may have occurred to the gentlemen composing the Synodical commission. That leaves us as the only matter for con-

sideration, the proceedings of the session of this Church in regard to these suspended elders. I have endeavored to show your Honor that the proceedings of these elders got no further than the session; that it did not even get to the Presbytery; consequently this remonstranee was the only paper that the Synod had before it in regard to the action respecting the elders. Can this Jury tell me, or the Attorney General tell me in his reply, how the Synod, from any paper before it, found out the names of these two elders? Having reeeived this paper—a paper in whieh the names of the elders were not mentioned at all, they make a decree about them and certain persons who adhere to them, and whom the Synod says shall have this eliureh. How did the Synod get these names? Now, Sir, I have said already that whenever it ean be demonstrated that the Synod aeted outside of the limits of its jurisdietion or had no jurisdiction over the subjeet matter at all, or aeted within the limits of its jurisdiction, but in an irregular or improper manner, nobody can be said to have done an act of insubordination to the Synod, who will not eomply with that action, who will not take notiee of that action, who aets in opposition to it. Here, as I think, it has been demonstrated, that when the Synod passed this judgment, saying that Dr. MeMurray and Mr. Guy should have this chureh, they aeted without their jurisdietion, and eonsequently their aet is of no effeet.

Now I want to eall your Honor's attention to what, to my mind, is the most important part of this case. Look at what the Synod aetually did. You see how they missed it again. Here is the Resolution:

"That Dr. A. S. MeMurray and Robert Guy, ruling elders, with the offieers and members whose names appear on the various papers submitted to Synod at its late meeting, and by Synod referred to this Commission, together with sueh others as may adhere to them, be and they hereby are deelared to be the First Reformed Presbyterian Congregation of Philadelphia, and as such entitled to all the rights and immunities appertaining thereto, and by this Commission, in the exereise of the power entrusted to it by Synod, are hereby placed under the care of the Second Reformed Presbytery of Philadelphia."

No matter whether they were pew-holders or not. No matter

whether they belong to this church or any other church. Certain persons whose names appear on certain papers with regard to which not a particle of testimony had been taken in the case are declared to be the First Reformed Presbyterian Congregation of Philadelphia, and as such entitled to all the rights and immunities pertaining thereto. Observe, sir, most carefully, that the Resolution relates to the congregation only. Do you suppose they intended to refer to the corporate title of the body in this phraseology? Not at all, sir. In point of fact, that is not the title. They do not pretend to refer to the corporate title. They say Dr. McMurray and Robert Guy and certain others shall be the congregation. *They do not say the Session.* It is the session that is to recognize these trustees under this charter, not the congregation. The resolution does not say church,—it does not say elders as such.

The Court. It describes the two as ruling elders whose names appear, etc.

Mr. Porter. Yes, sir, it describes them by title as ruling elders, but the resolution does not profess to relate to the Session as a Session. It does not touch the vital point of this charter. They have missed it, sir, and missed it in such a way that you can, as a Judge, lay your judicial hand upon it. It is written matter, and not matter proved by witnesses. The consideration of such papers is for the Court, and not for the Jury. What is the effect of that Resolution? Passing by the point that it never was properly before them, that they never got it in the right way, that they had no jurisdiction at all on the subject, and conceding for the sake of argument, that they had some right to act about it in some way, what did they do, sir? This charter provides very clearly and emphatically that there shall be a board of trustees which shall consist of seven members who shall be recognized by the *Session* of this congregation as being in full communion with this church. What is the session? There cannot be two sessions of one church; there is but one session of one church, just as there are not two Supreme Courts of Pennsylvania, or two Courts of Nisi Prius. There is one Church court pertaining and belonging to one church, called the Session. Who compose the Session? The book shows

that the minister and the elders constitute the Session, and here in this Resolution the Session is not in any way referred to.

By the *Court.* There is one matter which occurs to me, that is, whether a portion of the congregation, under the laws and usages of this church, can be set apart and declared to be the congregation without touching the Pastor of the church,—whether the Pastor can be removed in that way by taking out a portion of the members of his church and calling it the church.

Mr. Porter. That might be well illustrated by supposing that the Synod take every name of every member of the church, and just declare that the church should belong to such and such persons. This deprives the Pastor of his office at once, sir. They were not quite so graceless here as to do that, or attempt to do that. They tried, however, to accomplish the same thing in another way. They drew at the mark fairly. Several of these gentlemen who have been here, during the trial, were very skilful in pointing out the mark, but the arrow missed it, just as it frequently happens in these operations. After all, they left untouched the Pastor and the elders composing the session, and constituting the only primary court of the church. We proved, as a matter of fact, by Dr. Wylie, that the congregation is not the session. Doctor, I said, who compose the congregation? Any who come to hear me preach. Would you allow infidels to come and hear you preach? Most certainly, I wish they would come, and I would do what I could to persuade them of their errors. What do you mean, Dr. Wylie, by a member of the church? A person who is examined by the session, and who is regularly admitted by the session on profession of faith. Thus we have members of the church, and members of the congregation, and a totally different thing—a more important body—the session composed of the Pastor and elders. Mr. Guy and Dr. McMurray may form members of this congregation. I wish they would, and we would try to see whether we could not do them some good. I will advise Dr. Wylie to preach a special sermon to them, the very first time they come and form members of the congregation. As to members of a court, that is an entirely different matter. They might just as well confound citizens of Pennsylvania with judges of Pennsylvania. The judges of our Supreme Court are citizens of

Pennsylvania, the judges of our District Court are citizens of Philadelphia, but they are something more. The members of the session are members of the congregation. The session is a different thing from the congregation. Now, sir, let them abide by their own work as they have got it. Let them take their decree and make the most of it. If I came in here and took a judgment in your Honor's Court, and it got into a wrong form, I should not fail to be reminded of it. You have got your judgment in the wrong way; it does no good; it settles nothing at all; you have left out the description in your praecipe and in your summons. Well, let them take their judgment as they have it, sir. Our session has recognized our trustees, and our session is up to this minute of time totally untouched by anything the Synod has done. As to the session, the Synod has taken no action at all.

These relators claim to be trustees. I have shown that it is one of the express requirements of this charter, that the trustees shall be recognized by the session, as being in full communion with this Church. Are the relators recognized by the session? They cannot be trustees unless they are recognized by the session. The session is in full life; nothing has been done to impair its powers. Now, Sir, can there be a verdict for these relators? What I am aiming at now is, not what I was aiming at a few moments ago, that the Jury shall decide, as a matter of fact, that there was no authority on the part of this Synod, to act, and if there was, that it acted in the wrong way. What I say now is, here is a written paper which shows that the relators cannot be trustees unless they are recognized by the session. The relators are not recognized by the session. Our trustees are recognized by the session. Therefore, after everything that can be said in favor of the action of Synod, and its regularity, What has the Synod done to impair the power of the session? This is an important part of the charter; it is one of the terms and conditions on which it was accepted, and according to the terms and conditions of this instrument, the money to build this Church was invested. One of these conditions is, that no man shall set his foot on that property as trustee, unless he has been recognized by the session of the Church. Why then shall not your Honor raise the right hand of your official power, and strike down the case at once, and thus utter a

warning to every man who is disposed to consecrate his life to the wretched business of disturbing the peace of a church?

I have only one point more. It is provided in the charter that there shall be an annual election for trustees on the first Monday in January of every year, of which notice shall be given two weeks previously from the pulpit of the church. We proved, the other day, where this Church building is situated. These gentlemen went off to Horticultural Hall; they went to the old hall first, and then they went to the new hall. Was notice given by them from the pulpit of the election to be held in this Church building?

By the Court: There was notice given in what was used as their church, if they were the proper body.

Mr. Porter. No, may it please your Honor, even if they were the proper body, I insist that no proper notice was given of an election to be held in this Church at the time required by the charter. Suppose they were the proper body, why did they not come to the election held in this Church, and deposit their votes? Suppose we were not the proper body. It is certain, that if I am required to vote at a political election to be held in the 8th ward, I cannot go to Camden and deposit my vote there.

By the Court: Is not the word Church in the charter, the place where the congregation meets for worship?

Mr. Porter: Even that would not do them much good, Sir, because they gave their notice in one hall and held their election in another hall. It means, as I construe the word Church, the building erected and occupied under the charter, from which they were never driven out. I asked one of their witnesses, would you call that thing you have erected in the hall a pulpit?

By the Court: They worshiped in the new hall and held their election in the old hall, did they? I am not acquainted with the locality of these halls. Do they adjoin each other?

Mr. Porter: No, Sir! one is on one side of Locust Street, and the other is on the other side. The Church is in one place, and these halls are each in another place, almost a square apart. Now, the point I make is this, supposing they were the true Church, and that all these monstrous acts on the part of the Synod, are to be regarded as effectual, there was a certain particular, definite place designated by their own written law, as that at which they

were to vote. That was at the place for which the notice was given by us and ought to have been given by them. They gave the notice at one place and held the election at another place. I submit, that the true construction of the place is the church building in which they had all been worshipping up to the time of the difficulty. That place could not be a matter of doubt to any of them. Suppose there were two secessions, one party goes to one place and the other goes to another. How then? They did, it is true, apply for possession of the Church building, and we would not give it up. We would not give them the church put up and built with our own money, in which the services had been held for so many years. No, sir! we refused possession of the church. If they had got the church under that demand, and got possession of it, there might have been an end of our rights. But that demand for the church was for the purpose of holding the church and keeping it as a place of worship. They knew the very day on which the election was to be held. Suppose they had done a different thing. Suppose they had said to us, we propose to come and vote. We should have said, we do not recognize you. You are not members of this church; you have given up your pews; you have ceased to pay pew rent; you have ceased to commune; we have settled in full with you; we have no charges against you; you have no place in this church at all; we decline to receive your votes. Suppose but three or four persons had so tendered their votes, and then the question as to the regularity of that election had come up. If but one single vote had thus been given by a person entitled to vote, it would have determined the question. The law does not leave the matter of place as to where the election can be held, in any uncertainty. That building was the place for the votes to be deposited; they might have come there and voted, and did not. The election was not held in the proper place. It was not for them to say we will not make any attempt to vote, because they will not receive our votes.

By the Court. Suppose there had been one party in this congregation, and they had shut the church up, locked it up, and had gone to worship in the Horticultural Hall,—could they have held a valid and legal election there?

Mr. Porter. If the church had been entirely shut up, that

would have given rise to a different state of affairs. I am speaking of the holding of an election on that very day, when the church was opened expressly for the purpose of an election. We can imagine other facts. Suppose the church had burned down. The law would undoubtedly make allowance for impossibilities. I am not speaking of impossibilities. I am speaking of the case where the polls are open; in which they are kept open from 8 o'clock in the morning to 9 o'clock at night. Suppose a voter in Walnut Street would refuse to put his vote in the proper place, saying he knew they would refuse his vote, and so thinking, he gets into a cab and goes to Kensington and votes there. It did not require any possession of the building to vote here. If they had come and offered a vote here even at the outer door, and the vote had not been received, it would, if the voter had been entitled to vote, have carried the result. Just see then to what a simple point this long controversy comes down.

In conclusion I may say it is to me one of the most painful controversies in which I have ever been engaged. On both sides, I say it to the credit of counsel,—the late counsel, Judge Strong, and the present counsel, Mr. Price and Mr. Brewster, on the one side, and Mr. Patterson, Judge Lowrie and myself on the other, have labored and toiled systematically for peace. Some of the scenes have been to me inexpressibly painful. It has been a long, protracted, and almost unprecedented trial. I thought I had seen every case that could come before a court of justice in any form, from the simplest case in the criminal court, up to the court of the last resort. I must say, however, I never saw a case tried with more patience and more care, on the part of the court, than this has been tried. I must do the jury the credit to say that they have been very patient listeners; and I hope, gentlemen, you will be able to render a verdict, which shall give tranquility to this church, and that you will find a sufficient recompense for your labors during these many weeks, in the reflection that you have expended all this time in the conscientious performance of a high public duty.

Mr. Justice Williams' Charge.

GENTLEMEN OF THE JURY:—This cause has been tried with signal ability by the counsel on both sides. It has occupied an unusual length of time, and you have given to the evidence and to the arguments of the counsel, your patient attention. They have aided you, as they best could, to determine the evidence upon which you are to pass. It only remains now for you to give the same patient attention to the instructions which the Court is about to deliver, in order that you may be enabled to apply the law as laid down by the Court to the facts as you shall find them.

This is a proceeding by a writ of *quo warranto* issued by this Court, under the provisions of the act of 14th June, 1836. The writ was issued on the 3d of October, 1869, in the name of the Commonwealth of Pennsylvania, at the relation of George Gordon, John Biggerstaff, Ephraim Young, Robert C. Taylor, James Stewart, Robert Fletcher, and James Boyd, against James Graham, William Ray, Thomas Johnston, Thomas M. Kerr, Charles Williams, Abram Walker, and James Smyth, to show by what authority they exercise the franchises, offices, privileges and liberties of a Board of Trustees of "The First Reformed Presbyterian Congregation in the City of Philadelphia." The writ was made returnable on the first Monday of January, 1870, and was duly served on the persons named therein as defendants.

On the 19th of March, 1870, the relators presented a petition to the Court, showing that their term of office as trustees of the said congregation expired on the first Monday of January, 1870, and that on that day they had been duly and legally re-elected trustees of the said congregation for the year 1870, and that Charles Williams, Thomas Johnston, Abram Walker, James Smyth, Wm. G. Porter, John Pettigrew, and George H. Stuart, Jr., claimed to hold the franchises and privileges of the Board of Trustees of said congregation, by another election held at the same date, and pray-

ing the Court to make an order substituting the petitioners as relators for the said term, and the said Charles Williams and the other persons named in the petition, claiming to hold the franchises and privileges of the Board of Trustees of said congregation as defendants. And thereupon, on the 26th of March, 1870, the Court made the order of substitution prayed for, and directed that the said petitioners, and the said Charles Williams, and others, be substituted as relators and defendants. On the 5th day of July, 1870, the record was amended by inserting the date of March 2, 1870, in place of the first Monday of January, 1870, as the time at which George H. Stuart, Jr., one of the defendants, claimed to have been elected a trustee of the said congregation.

In the suggestion and petition filed by the relators in this case, as amended by order of the Court, the relators allege: *First*—That "The First Reformed Presbyterian Congregation in the city of Philadelphia" is a corporation duly organized under an act of the General Assembly of the Commonwealth of Pennsylvania, approved the 6th day of April, A. D. 1791, as will appear by the charter enrolled in the Secretary's office, at Harrisburg, March 19, 1816, and the addition thereto, enrolled in said office December 22, 1828, a copy of which charter, and of the addition or supplement thereto, is set out in the suggestion. *Second*—The relators further allege that at the regular annual election for the members of the Board of Trustees of said congregation, held in accordance with the terms of the charter, on the first Monday, the third day of January, 1870, the said relators were in due and regular form of law elected as a Board of Trustees of said congregation, and have been recognized by the session of the said congregation as being in full communion with the said church. But, notwithstanding the premises and the said election, the said Charles Williams, Thomas Johnston, Abram Walker, James Smyth, William G. Porter and John Pettigrew, during all the time since the said third day of January, 1870, and the said George H. Stuart, Jr., during all the time since the 2d day of March, 1870, have used and still do use the franchises, offices, privileges and liberties of a Board of Trustees of the said "The First Reformed Presbyterian Congregation in the city of Philadelphia," and during the said time have usurped and do usurp upon the Commonwealth therein,

to the great damage and prejudice of the Constitution and laws thereof.

On the 31st of October, 1870, the defendants filed three pleas in answer to the suggestion of the relators.

The first plea is filed by the six defendants first named in the record; the second by George H. Stuart, Jr., the other defendant. Both pleas admit the incorporation of the congregation, under the act of the 6th of April, 1791, and the charter to be as the same is set forth in the suggestion of the relators. The defendants named in the first plea say that the Commonwealth ought not to implead them by reason of the premises in the said suggestion and petition set forth, because they say that they, together with Thomas M. Kerr, were duly elected and chosen Trustees of the said corporation in accordance with the charter thereof, at the anuual meeting of the said corporation, for the election of Trustees, held in accordance with the charter, on the first Monday, the third day of January, 1870, and were recognized by the session of said congregation as being in full communion with the said church; and that afterwards, on the 10th of January, 1870, they accepted and took upon themselves the said offices, and met and chose a President, a Treasurer, a Secretary and a Sexton, and, from thenceforth they have, by virtue of the said election and by that warrant, exercised, and do still continue to exercise, in the city of Philadelphia, the said offices of trustees of the said corporation, and the franchises, liberties and privileges thereunto belonging.

The second plea filed by the other defendant, George H. Stuart, Jr., alleges that he was duly elected a trustee of the said congregation to fill the vacancy occasioned by the resignation of Mr. Thomas M. Kerr, at a congregational meeting held on the 2d of March, 1870, by the qualified voters then and there present; and that he was recognized by the session of the said congregation as being in full communion with this church, and that then and there he accepted and took upon himself the said office, &c.

In their third plea the defendants allege that the relators have not been since the 1st of July, 1868, and are not now corporators of the said corporation; without this that the said relators, or any of them, were on the first Monday of January, 1870, or at any other time before or since, in due and regular form of law elected

trustees of the corporation in manner and form as in the said suggestion and petition alleged.

On the 11th of November, 1870, the relators filed their replication to the defendants' pleas, traversing the allegations contained in them, that is, denying that the defendants were duly elected trustees of the said congregation in the manner, place and form as in the first and second pleas alleged, and averring that the relators were on the 1st of July, 1868, and before that day, and ever since that time, and now are corporators of the said corporation, and in due and regular form of law elected trustees of said corporation.

Under the issue formed by the pleadings, the questions for the determination of the jury are :

First—Were the defendants, with the exception of Geo. H. Stuart, Jr., duly elected trustees of the First Reformed Presbyterian congregation in the city of Philadelphia on the first Monday of January, 1870, and was Geo. H. Stuart, Jr., the other defendant, duly elected a trustee of said congregation on the 2d of March, 1870 ?

Second—Have the relators been corporators of said corporation since the 1st of July, 1868 ? Are they now corporators or members of the said corporation, and its duly elected trustees ?

The congregation to which both parties belonged was divided in 1868. One portion, that represented by the defendants, retained possession of the church building, and have since continued to worship there, as formerly, under the care of their pastor, the Rev. Dr. T. W. J. Wylie. The other portion, represented by the relators, withdrew to the building known as the Old Horticultural Hall, and have continued to worship there and in the building known as the New Horticultural Hall since the last Sabbath in June, 1868, and is now, and for some time past has been, under the pastoral care of Rev A. G. Wylie. Both parties are, in fact, separate and distinct congregations, each having a pastor, session and board of trustees. If that part of the old congregation now worshipping in the Horticultural Hall constitutes the corporation known as the First Reformed Presbyterian church in Philadelphia, then the relators are its duly elected trustees. But if the portion which retained possession of the church building, and which has

continued to worship there since as before the division is the corporation, then the defendants are its duly elected trustees.

But, in order to determine which is the corporation we must trace the history of the congregation through the difficulties and troubles which led to the separation; ascertain, if we can, its causes; see what have been the acts of the respective parties, and what has been the action of their Ecclesiastical Courts, so far as it may have a bearing on the question, and in this way determine, if possible, whether the relators or the defendants constitute its Board of Trustees. The congregation, as the evidence shows, was organized about the year 1800, and obtained its charter of incorporation in 1816. It first met for worship in a private dwelling-house; next in a school-house; then in a small church on St. Mary street; after that, in a church on Eleventh street, and in 1854 it began to worship in a church, then newly erected by its members, on Broad street, where it continued to worship in peace and harmony until the commencement of the differences which led to its separation in 1868. The first difficulty of which we have heard arose from the giving of a communion token by one of its elders (Mr. Geo. H. Stuart) to a member of a Presbyterian Church not in ecclesiastical connection with his congregation. The next cause of offence was the singing of hymns in the colored mission school, under the charge of some of the members, but having no ecclesiastical connection with the congregation. But it is obvious that these differences were not the occasion of the schism which afterwards took place. It would seem to have had its origin in the apprehension or belief on the part of that portion of the congregation represented by the relators that it was the purpose and design of the defendants and those whom they represent, to do away with the exclusive use of the Psalms in singing God's praise, and to introduce the singing of hymns in their public social worship; an apprehension or belief which the evidence shows to have been wholly unfounded, however otherwise it may have seemed to the relators and their friends at the time, and however it may have arisen. The evidence shows that a hymn was never sung in the public social worship of the congregation at any time; and that neither the pastor nor any of the elders or other members of the congregation had any intention of introducing the singing of

hymns as a part of the public social worship of the church. But the impression undoubtedly prevailed that there was such a design, and the discussion which took place at the meetings called for the purpose of considering "the basis of union" proposed for adoption by the Philadelphia National Union Convention developed the fact that there were two rival antagonistic parties in the church, ready to try their strength on the first occasion; and an opportunity was presented at the election for trustees in January, 1868. It is evident, from the very large numbers in attendance at this meeting, that the congregation was greatly excited, and many of them seem to have thought that the question of the singing of Psalms to the exclusion of hymns was involved in the election; for this, as has been testified, was their rallying or battle cry. We may marvel at this; for the result of the election, whatever it might be, could have no possible effect or bearing on the question of singing Psalms or hymns whatever. It was a matter with which the trustees had nothing to do; the religious services of the congregation being entirely under the control and direction of its pastor and session, subject to the established order and usages of the church. By the express provisions of the charter, the power of the trustees extends only to the temporalities of the Church in taking care of the property of the congregation; and without the authority of a majority of the congregation the trustees cannot expend a sum exceeding one hundred dollars. Their whole duty consists in taking care of the church building and other property belonging to the congregation, renting the pews, collecting the pew rent, and paying the expenses—a duty which would have been discharged with fidelity and to the satisfaction of the congregation by the candidates on either ticket, and yet a matter of such little moment to the congregation as it would seem was made the occasion of separating one portion of the congregation from the other. Heretofore divisions in other churches have been caused by a radical difference of opinion in matters of faith, doctrine, church order, or government; but this congregation of believers, belonging to the Reformed Presbyterian Church, which traces its history back through the times of the solemn league and covenant to the reformation, which was commenced by John Knox, this Church of the Old Covenanters, which came out of so great

tribulation and so many of whose members sealed their testimony to the faith with their blood, and "the echo of whose persecution rings through Scotland to this hour," was rent in twain and divided asunder on the question whether George Gordon, John Biggerstaff, and their associates on the written ticket, or James Graham, Thomas Johnston, and their associates on the printed ticket, should have charge of its temporalities. But so it was to be. Both parties met in a high state of excitement, one party anxious to enter on the work of balloting in the shortest possible time; the other intent upon first obtaining an expression of opinion of the congregation in favor of its pastor, and hoping, perhaps, to gain something by the delay. And then commenced that scene of discord, uproar and confusion, described by the witnesses, when some said one thing and some another, as in that assembly at Ephesus, whose uproar the town clerk could with difficulty appease. And so here the congregation was at length appeased and the balloting began. Both parties intended that the election should be fairly conducted, and for this purpose they chose four tellers, two on each side. Almost 500 votes were deposited, and when the voting ceased it was suggested that illegal votes had been cast, and a motion was made that the lists and the ballot-boxes should remain in the hands of the tellers until the Session and the Board of Trustees had examined them, to ascertain whether any illegal votes had been cast. What the precise words of the resolution were, or whether the resolution was passed, is a question in dispute. But the meeting adjourned to hear the report of the Session and the Board of Trustees on the next Monday evening, and on that evening they came together, and the Session made a partial report, asking for further time, and giving their reasons; and then commenced another struggle on the part of the relators to have the election, which took place the previous evening, declared valid; and, on the part of the defendants, that no such resolution should be passed. A resolution on one side was offered and a counter-resolution on the other, and in this way the struggle was kept up until past midnight. In the meantime, five of the relators, who had received the highest number of votes, retired to the lecture-room and organized by choosing a President, a Treasurer and a Secretary; and at last, on motion of Mr.

Alexander, the meeting was turned into a midnight meeting, and after prayer, adjourned to meet, as announced by the Chairman at the call of the Session and the Board of Trustees, though it is said that this is no part of the motion, and that no such vote was passed, but they came together on the 13th of February at the call of the Session and Board of Trustees to hear their report to the effect that, after having carefully examined the list of voters, they had ascertained that 127 illegal votes had been cast.

A motion was made to accept the report, the vote was taken, and declared carried. A motion was then made to adjourn, put to the meeting, and declared carried. And then commenced another scene of disorder, and an attempt to reorganize by the election of another chairman; and at last the congregation reluctantly dispersed.

Now then, gentlemen, if this congregation—one side or the other—had then come into this Court with this very proceeding that we are now trying, it would have been a very simple question.

All that we should have had to do would have been to have had the voters before us, and to ascertain whether they were legally entitled to vote, and the result of the contest would then have been far different from what it will be now. The candidates of the successful party would have been put in office, and the congregation would not have been divided; but, as the controversy now stands, it involves the question as to which party is entitled to the possession of the church and the property belonging to the congregation; for it is evident that these parties can never worship together again in peace and harmony. But, instead of doing this, both parties went into their Ecclesiastical Courts and invoked their aid, and instead of settling the question they made it more complicated and difficult—one of the most complicated and difficult I have ever been called to try. There were protests and appeals from the action of the session in taking cognizance of this matter, which were altogether out of order.

The Session was not acting in its judicial capacity. It had no right to act, unless the authority was given to it by the congregation, and if no authority was given by the congregation, it had no right to act whatever, and its whole action was a nullity. And then charges against two of the elders, and charges against three

of the trustees were preferred, and a committee appointed to prepare libels against them. Then declinatures and appeals to Presbytery and then Presbytery met, and some of these papers were received, and some were rejected as being irregular, and a Commission was appointed by Presbytery to come down to this church to try and settle its difficulties. Commissioners met these parties, informally, and adjourned to meet after Synod.

The Synod met in Pittsburgh, and then these parties, Dr. McMurray and Mr. Guy, presented a remonstrance, and Mr. Young and some others, libels and papers of one sort and another, all of which were referred to their committee on discipline, and their committee on discipline made a report to the Synod, and the Synod adopted that report. One of the things proposed in which was to revoke the sentence of suspension against Dr. McMurray and Mr. Guy, which had been pronounced in the Session.

Then they undertook to settle one of the questions that we are now trying, viz.: Whether the Session and Board of Trustees had the right to determine who were entitled to vote at the election? Then they appointed a commission to come down and settle the whole difficulty and issue the whole case; and, to make sure work, they enjoined all the lower judicatories from proceeding in the cases then pending before them, or that might come before them, growing out of the difficulties in this congregation, and forbade the parties from impleading each other in relation to said difficulties; and then, or before this, they suspended Mr. Stuart; and after the Synod adjourned this Presbytery was called together; and, after reciting its grievances, it resolved to suspend relations to the Synod, and then when this Commission came down, it took testimony showing that the Presbytery had suspended its relations to Synod, and it then undertook to declare Presbytery to be out of the jurisdiction of the General Synod, and recognized two of the parties represented here as elders, and the other officers and members that might adhere to the congregation, and entitled to all its rights and privileges. And then the Synod of 1869 ratified and confirmed a part of this action, and declared this Presbytery, with which this congregation is connected, to be out of its jurisdiction.

This is an outline of the history which has grown out of the work that was done on that evening, when almost five hundred members

of this congregation came together for the purpose of electing trustees, who should have charge of its temporalities for one year.

The relators contend:

First.—That they were elected trustees at the election in January, 1868, and that they were wrongfully kept out of the said offices by the defendants. That the party they represented, though in the majority, were excluded from the church by the party represented by the defendants, and were compelled to withdraw from the church and organize for worship, as they did elsewhere; that they have kept up their organization ever since, and that they were duly elected trustees of the corporation on the first Monday of January, 1870, and that in virtue of said election, they are entitled to have charge of the temporalities of the church.

Second.—That they are in regular connection with the General Synod, to whose jurisdiction and authority the congregation comprising this corporation is subordinate, and that they have been recognized by the Synod as the First Reformed Presbyterian Congregation in Philadelphia.

Third.—That the defendants are not in connection with the Synod, nor are they in subordination to its authority, but have been declared to be without its jurisdiction.

The defendants on the other hand, deny that the relators were elected trustees of the congregation in 1868, and they contend that there was no election, on account of the great number of illegal votes, and that the Session and Board of Trustees, to whom the matter was referred, so decided; and that their decision was binding on the question; they deny that the party represented by the relators constituted a majority of the congregation, or that they were excluded from the church as a place for worship, but only from the charge of its temporalities; and they allege that the relators voluntarily withdrew and organized a separate and distinct congregation elsewhere, calling and settling another preacher, and that thereby they have ceased to be members of the congregation, and have lost their rights as corporators.

Second.—They contend that they have not ceased to be members of the corporation in consequence of any action on the part of their Presbytery, or of the Synod, because they say that the Presbytery had the right to pronounce the act of suspension, and

that the acts of the Synod were unconstitutional, illegal, arbitrary and oppressive, and in palpable violation of the laws and usages of the Church.

Were the relators elected trustees of the corporation at the congregational meeting in January, 1868?

It is admitted that they received a majority of the votes polled, but it is conceded that they were not declared to be elected. Whether they were elected or not depends upon the action of the congregation. Did the congregation, after the ballots had all been received, and before they had been counted, on motion, order that the votes polled remain in the custody of the tellers until the list of the parties voting should be submitted to the Session and Board of Trustees for their examination, in order to ascertain whether all the votes cast were legal, and that no certificates of election should be given until it had been ascertained that no illegal votes had been cast? Was such a resolution passed? And were the votes then counted and the result announced, with the understanding and agreement of all parties duly expressed that the validity of the election should be under the restriction imposed by the resolution? Whether such a resolution was or was not passed is a question of fact for the determination of the jury, and in regard to which the evidence is conflicting. The Session and Board of Trustees had no authority to decide upon the question of legality or illegality of the votes cast, or to determine the validity of the election, unless they were expressly authorized to do it by a vote of the congregation. But it was competent for the congregation to refer the question of the validity of the election to them for their determination, and to agree to abide by their decision; and, if the congregation did refer the question to them, and did not revoke the authority, the relators are bound by their decision, if it was made in good faith, though they may have been mistaken in deciding that some of the parties named on the list were not entitled to vote.

If the jury find that the validity of the election was referred to the decision of the Session and Board of Trustees, and that in good faith they decided that the election was invalid, then the relators were not entitled to act as trustees, and the old Board properly continued in office until the next annual election. But if

the jury find that the relators were duly and legally elected trustees of the congregation in 1868, they will give to the fact such weight as it may be entitled to in determining the issues raised by the pleadings in this case. Were the defendants, then, as they allege, or were the relators elected trustees in 1870?

I propose to submit this question to the jury without reference to the action which has been had in the ecclesiastical judicatories with which this congregation was connected when the troubles began, which ended in its separation, before proceeding to consider the effect of that action.

It is well settled that a majority of a church congregation has the right to direct and control in all church matters, consistently with the laws of its own organism, or of the denomination to which it belongs. This right is inherent in every congregation; and so long as there is no departure from any article of its faith or creed, nor any violation of the system of religious principles adopted by it, the majority have the right to control its affairs, whether it is incorporated or unincorporated, unless it is otherwise provided by its charter or laws. Under the charter of this congregation, a majority of the qualified voters have the right to control its affairs and to choose the Board of Trustees to whose care its temporalities are committed. Did the party represented by the relators constitute a majority of the congregation at the time of the separation? Were they excluded from the Church and compelled to leave by the defendants? If so, they did not lose their rights as corporators by being shut out of the church building, and they had the undoubted right to organize as they did, elsewhere, and to elect trustees; and the trustees so elected are the trustees of the corporation, and entitled to the charge of its temporalities. But if they were not excluded from the church building, but voluntarily withdrew from it, and organized elsewhere, whether they were a majority or minority of the congregation, the trustees whom they elected are not the trustees of the congregation.

They did not withdraw because there was any change in the system of religious principles adopted by the congregation when it was established, nor because there was any change in its ancient order or mode of worship. The same doctrines were taught, the same Psalms were sung as when the congregation was first organ-

ized, and in this respect all things continued as from the beginning, without any change whatever. And if the relators were duly elected the trustees of the congregation in 1868, and if they were wrongfully prevented from acting as such, the party that voted for them, even if they were a majority of this congregation, had no right, voluntarily, to withdraw from the congregation and to organize elsewhere, and claim the rights of corporators. It was their duty to remain in the church if they wished to retain the rights of corporators, and to seek their redress by legal means. If the jury find that the party represented by the relators constitute a majority of the congregation, and that they were excluded from the church building and compelled to go elsewhere to worship, then they had the right to organize as they did, in the building known as Horticultural Hall; and if they have kept up their organization, and have duly elected the relators trustees, they are entitled to hold the offices and franchises of the corporation, and your verdict should be in favor of the Commonwealth. But if the relators, and the party which they represent, were not excluded from the church; if they might have remained and worshipped there, as formerly; if they were not compelled to leave, but voluntarily withdrew, then the relators are not the trustees of the corporation, unless they are so in virtue of the action which has been had in the ecclesiastical judicatories, with which the congregation was connected, at, and immediately before the separation took place.

What, then, is the effect of the ecclesiastical action given in evidence upon the rights of the respective parties? Have the defendants ceased to be the corporators in consequence of this action, and are the relators in virtue thereof, its legal representatives and trustees?

Passing by the action which took place in the Session and Presbytery before the separation took place, as wholly irrelevant to the question, let us come at once to the action of the Synod, which met at Pittsburg, in May 1868. And we need not stop here to consider whether Synod had jurisdiction of the case of Mr. Stuart in the manner in which it was brought before it, or whether the act or decree of suspension which it pronounced, was valid, or void for want of jurisdiction. It is manifest that whether just or unjust,

valid or void, it did not change or affect the relations existing between the congregation or the Synod, in any way whatever.

It neither suspended nor severed the connection. The only action which has any bearing upon the question in the aspect in which we are now considering it is that which took place on the remonstrance, or the petition and the other papers presented by Dr. McMurray, Robert Guy, and others. If that action is null and void because it was not warranted or authorized by the laws and usages of the Church; if the Synod has no power or authority to do what it did or attempted, then it is to have no influence in determining whether the relators or defendants are, or are not, the trustees of the congregation.

What then did the Synod first do which may possibly have some bearing on the question at issue? It revoked the action of suspension pronounced by the Session on Dr. McMurray and Mr. Guy, and it unquestionably had authority to do this, if it had jurisdiction of the case by appeal or otherwise. But if the case was not before the Synod by appeal or in any other mode known to its laws and usages, then it had no jurisdiction and no authority to revoke the suspension, and its decree was a nullity, and it was not binding on the lower judicatory, and it was not an act of insubordination on the part of the Session to disregard it. Under the laws of the Church as contained in the Book of Discipline given in evidence, and which are binding upon all of its judicatories, from the highest to the lowest, the Synod has no more authority to revise or revoke the judgment or sentence pronounced by any of the lower judicatories if the case is not before it, than this Court would have to revise and reverse a judgment of any of the lower courts that was not brought before it in some way known to and provided for by the law. And if this Court should reverse a judgment of one of the lower courts without having the record brought before us, and when no writ had been sued out to bring up the record, or no appeal had been taken, the Court below would be justified in disregarding the judgment or decree of reversal, without being guilty of insubordination or want of due respect to the lawful decision of this Court. The validity of the decree revoking the suspension turns upon the question whether the case was before the Synod in any of the forms known to its law. The fact that

Synod took jurisdiction of the case, or of the cases, for the records of the session show that there were two cases—and that there were separate charges in each case, is presumptive evidence that the matter was properly before it, and it lies on the defendants to show conclusively that it was not. I do not find in any of the papers given in evidence, that there was any appeal from the precautionary sentence of suspension. Nor do I see from any of the papers to which my attention has been called, that it was brought up in any of the other forms prescribed and provided for by the Book of Discipline, and it has been testified by witnesses familiar with the laws and usages of this Church, that it was not judicially before the Court. The jury will then determine, as matter of fact, whether Dr. McMurray and Mr. Guy did bring up the sentence pronounced against them by the session before the Synod, by appeal, petition, or other form of writing. Their mere verbal statements before the Committee on Discipline, if any such were made, would not be sufficient to give the Synod jurisdiction in the matter. But it lies upon the defendants to satisfy you clearly by evidence, about which there can be no mistake, that the case was not properly before the Synod under its law and usages. It is true that this Court has no jurisdiction to annul or set aside the decree or judgment of the Synod, but we can and ought to declare that, if judged by the laws and usages of the Church, it was void, because the Synod had not judicial cognizance of the sentence which it undertook to revoke; that then, it cannot be allowed to have any effect upon the rights of the parties to this controversy whatever.

The next question is, had the Synod any authority over the subject matter embraced in the second resolution? If it had, then its decision is final and conclusive of the question, and this Court cannot rejudge the matter, but is bound to instruct the jury that the joint action of the Session and Board of Trustees in the matter referred to is illegal, and of no effect—for so the Synod declares. But ecclesiastical courts have no civil jurisdiction whatever—much less have they the supervision and control of corporations. The laws have not conferred this branch of equity jurisdiction upon them, but have vested it in courts having civil jurisdiction. The jurisdiction of church courts is purely ecclesiastical. This is the doctrine, not only of the common law, but also of the ecclesiastical

law of this church. "Synods and Councils are to handle or conclude nothing but that which is ecclesiastical, and are not to intermeddle with civil affairs."—*Confession of Faith*, ch. 31, sec. 5.

The Synod next appointed a commission, consisting of four ministers and three ruling elders, to whom it referred the whole matter pertaining to the difficulties existing in this congregation, and clothed them with synodical powers, and gave them authority to issue the whole case; and, at the same time, it suspended and restrained the Session from the exercise of all judicial functions in any matter or matters pertaining to the present difficulties in said congregation, or considering or issuing in their judicial capacity as a Session any case relating to said difficulties; and it also restrained and prohibited the Philadelphia Reformed Presbytery, to which this congregation was attached, from considering or issuing any case then pending before them or that might thereafter be brought before them relating to the existing difficulties in said congregation. It is conceded by the defendants that the Synod had power to appoint a Commission, but the defendants deny that it had power or authority to enjoin the lower judicatories from proceeding in the cases then before them. And I have not been able to discover any authority for it, either in their Book of Discipline, or in any of the standards recognized and adopted by the Church; and it has been testified by those who are familiar with its ecclesiastical laws and usages, that there is no law or precedent to justify it. If this fact be so, then you should give no weight to this action of the Synod in determining whether the defendants or the relators are the duly-elected trustees of the congregation.

We come now to the action of the Commission. It was clothed with all the judicial powers of the Synod in regard to the difficulties existing in this congregation, and had authority to issue the whole case, but it had no jurisdiction or authority over the Presbytery to which this congregation belonged, for none were conferred upon it; and how did it exercise the power with which it was clothed by the Synod? It issued a citation against the Rev. T. W. J. Wylie, D.D., the pastor of the church, and against six members of the congregation, three of whom were trustees, two elders, and the other who was both a trustee and elder. Only one citation was served upon them by leaving a copy at their residences,

to appear the next morning at 9 o'clock—whereas the book requires that three citations shall be served before a party can be proceeded against in his absence. But this want of conformity to the requirements of the book is immaterial, as the Commission did not proceed to try or pass sentence upon them. But it did proceed to take testimony in regard to the action of the Presbytery, a subject over which it had no jurisdiction, for none as we have seen was conferred upon it by the terms of its Commission; and then it proceeded to declare the Presbytery out of the jurisdiction of General Synod and of this Commission. It undoubtedly had power to declare the Presbytery out of the jurisdiction of the Commission—for it never was within its jurisdiction—but it had no power to declare it to be without the jurisdiction of General Synod; and this declaration, so far as it is to be regarded as the act of the Commission, was utterly void. But this Commission did more—without examining a single witness or taking any testimony whatever—without any notice to the pastor and Session or any member of this congregation; it resolved

"That Dr. A. S. McMurray and Robert Guy, ruling elders, with the officers and members whose names appear on the various papers submitted to Synod at its late meeting, and by Synod referred to this Commission, together with such others as may adhere to them, be and they hereby are declared to be the First Reformed Presbyterian Congregation of Philadelphia, and as such entitled to all the rights and immunities appertaining thereto, and by this Commission, in the exercise of the power entrusted to it by Synod, are hereby placed under the care of the Second Reformed Presbytery of Philadelphia."

Now, if the Commission had authority under the judicial powers conferred on it by the Synod to pass this resolution, and if the act is legal and valid, it settles the controversy in this case; for the Commission declare Dr. McMurray and Robert Guy, Ruling Elders, with the officers, (meaning thereby the relators), and the members whose names appear on the various papers submitted to Synod to be the First Reformed Presbyterian Congregation of Philadelphia, *and as such entitled to all the rights and immunities appertaining thereto.* Now, if the Commission had the right to declare Dr. McMurray and Mr. Guy, and the other persons referred

to, and all others who might adhere to them to be "The First Reformed Presbyterian Congregation of Philadelphia," I am quite certain that they had no right—and so instruct the jury—to declare them entitled to all the rights and immunities appertaining thereto, so as to make their decision final and conclusive upon this Court; and I am inclined to think that the Commission, under the judicial powers conferred upon it by the Synod, had no warrant or authority for their act in detaching a portion of the congregation, under the pastoral care of Dr. Wylie, from the remainder of the congregation, and declaring it to be the congregation. If they had, then Dr. Wylie was their pastor; for no attempt was made to dissolve his pastoral relations to his congregation; and it would follow that he is still their pastor, and not the rightful pastor of the congregation that now worship in the church on Broad street. The Presbytery, on petition, may set off a portion of a congregation and organize another church, but it cannot split a church in twain and declare which part is the church. It seems to me that such a proceeding is not a judicial act, and if it is a legislative act, I very much question whether it is competent for the Synod to delegate legislative power and authority to a Commission; and I therefore instruct the jury that the rights and immunities of the congregation were not vested solely in Dr. McMurray, Mr. Guy and the officers and other members referred to, together with such others as might adhere to them, by this act of the Commission, and that the connection with the Synod of that portion of the congregation which remained in possession of the church was not thereby dissolved.

And this brings us to the question as to the effect of the resolution of Presbytery suspending its relations to the Synod. Was this an act of secession—an absolute severance of the relations existing between them, as has been contended by the counsel for the relators; or was it, as the resolution declares it to be, a suspension of relations until the action complained of should be revoked, or until the Presbytery obtain further light; and was it their intention *not* to sever the tie which bound them to Synod, but to "remain in the Reformed Presbyterian Church, maintaining her organization and endeavoring to develop and apply her principles in their proper application to the age and country in which

we live"? It seems to me that the act of suspension was not intended to be permanent, but temporary, in its duration; but I very much doubt the right of the Presbytery to pass such an act.

No authority or precedent has been shown for it, and it undoubtedly rendered the Presbytery amenable to the discipline of Synod; but I cannot think that it was such an act of absolute severance of the connection between the congregations represented in the Presbytery and the Synod as would have prevented the latter, in the exercise of its original jurisdiction, from dealing in the way of discipline with any of the members of these congregations upon a proper case being shown for its exercise.

The Synod of 1869 did proceed to deal with the Presbytery, and to pass sentence against it for this act of insubordination, for it declared it to be without the jurisdiction of Synod—thus severing the connection which heretofore existed between them. This act derives its whole force and virtue from the action of the Synod. It has no force or virtue by reason of the action of the Commission, for the reason already given. And so with regard to the resolutions declaring Dr. McMurray and Robert Guy, and the other persons referred to, together with such as might adhere to them, to be the congregation. If it has any force or binding obligation, it is in virtue of the action of the Synod. It may have been competent for Synod to recognize and declare them to be the First Reformed Presbyterian Congregation of Philadelphia, so far as it respects its own relations to them; but it could not invest them with the rights and immunities conferred by the charter, if they had previously ceased to be members of the corporation by their voluntary withdrawal from the congregation constituting it.

If, therefore, the jury find that the relators, and that portion of the old congregation which they represent, were not excluded from the church building, or deprived of the privileges of meeting for worship there, if they were not compelled to leave, but voluntarily withdrew and had ceased to be members of the corporation, before the action of the Synod of 1869, declaring the Presbytery with which the congregation represented by the defendants was ecclesiastically connected, to be without the jurisdiction of Synod, then the defendants are entitled to a finding in their favor on all the issues raised by these pleadings.

But if the jury find that that portion of the old congregation represented by the relators constituted a majority of the congregation, and that they were excluded from the church building, and were not permitted to worship there, but were compelled to go elsewhere and organize for worship, and that they have maintained their organization, and that the relators are their trustees, duly elected, then your verdict should be for the Commonwealth.

If the relators left because they were not allowed to have charge of the temporalities of the congregation as its trustees, they mistook their remedy. They ought to have remained in the congregation and sought the redress which the law would have given them.

I have had a number of points presented to me, gentlemen, upon which I have been requested to charge you, on both sides. In so far as the points are not answered in the charge, they are declined.

I therefore submit this case to your careful consideration and determination, under the instructions which have been given. You have listened thus far patiently, and I have no doubt you will deliberate wisely and well, and render a just and proper verdict.